

DRAFT

FOR DISCUSSION ONLY

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

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

AMERICAN BAR ASSOCIATION

For Final Review by Drafting Committee on
Harmonization of Business Entity Acts

Without Comments, but with Reporters' Notes

Strike and Score Version

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NATIONAL CONFERENCE OF COMMISSIONERS
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May 17, 2011

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MODEL ENTITY TRANSACTIONS ACT

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Introductory Reporters' Note

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

The Comments to the act have been omitted from this document to reduce its length. Following the approval of the changes in this document by the Conference, the Comments will be restored with appropriate changes.

The harmonization process has involved the revision of the following acts:

- Business Organizations Act (the "HUB")
- Model Entity Transactions Act
- Model Registered Agents Act ("MORAA")
- Uniform Partnership Act (1997)
- Uniform Limited Partnership Act (2001)
- Uniform Limited Liability Company Act (2006)
- Uniform Statutory Trust Entity Act
- Uniform Limited Cooperative Association Act
- Uniform Unincorporated Nonprofit Association Act (2008)

Changes to the currently effective text of the act are shown by ~~striking through text to be deleted~~ and underlining text to be added. Regular type is used to show changes that (i) adopt language from the HUB or MORAA, (ii) are merely relocations of current language, or (iii) are corrections for the sake of internal consistency within the act. *Changes that adopt language from other unincorporated entity laws are shown in italics.* CHANGES THAT DO NOT HAVE A SOURCE IN ONE OF THE EXISTING UNINCORPORATED ENTITY LAWS ARE SHOWN IN SMALL CAPS. The changes shown in SMALL CAPS made in this act are replicated in other acts as a matter of harmonization and are shown in those acts in black type.

Each of Articles 2 through 5 of this act deals with a particular type of entity transaction. Aside from differences in the provisions of those Articles that reflect the specific nature of each type of transaction, the provisions of each Article are very similar to each other. Thus, the first time a change occurs in this act that does not have a source in another unincorporated entity law, it is shown in SMALL CAPS, conforming changes in subsequent Articles are shown in regular type

1 **MODEL ENTITY TRANSACTIONS ACT**

2 **[ARTICLE] 1**

3 **GENERAL PROVISIONS**

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

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

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

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

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

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

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

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

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

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

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

23 (7) “Converting entity” means the domestic entity that approves a plan of conversion

1 pursuant to Section 403 or the foreign entity that approves a conversion pursuant to the law of its
2 jurisdiction of ~~organization~~ formation.

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

5 ~~(8)~~ (9) “Domestic entity” means with respect to an entity, whose means governed as to
6 its internal affairs are governed by the law of this state.

7 ~~(9)~~ (10) “Domesticated entity” means the domesticating entity as it continues in
8 existence after a domestication.

9 ~~(10)~~ (11) “Domesticating entity” means the domestic entity that approves a plan of
10 domestication pursuant to Section 503 or the foreign entity that approves a domestication
11 pursuant to the law of its jurisdiction of ~~organization~~ formation.

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

13 ~~(12)~~ (13) “Entity” means:

14 (A) means:

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

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

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

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

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

21 [(vi) a general cooperative association;]

22 (vii) a limited cooperative association;

23 (viii) an unincorporated nonprofit association;

1 ~~(F)~~ (ix) a statutory trust, business trust, or common-law business trust ~~or~~
2 ~~statutory trust entity;~~

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

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

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

8 (B) does not include:

9 (i) an individual;

10 (ii) a testamentary, or inter vivos, trust with a predominately donative
11 purpose or a charitable trust, ~~with the exception of a business trust, statutory trust entity or~~
12 ~~similar trust;~~

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

16 (iv) a decedent’s estate; [or]

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

19 [(vi) a person excluded under Section 110].

20 ~~(13)~~ (14) “Filing entity” means an entity ~~that is created by~~ whose formation requires the
21 filing of a public organic document record. The term does not include a limited liability
22 partnership.

23 ~~(14)~~ (15) “Foreign entity”, with respect to an entity, means an entity governed as to its

1 internal affairs by the law of a jurisdiction other than a domestic entity this state.

2 ~~(15)~~ (16) “Governance interest” means ~~the~~ a right under the organic law or organic rules
3 of an unincorporated entity, other than as a governor, agent, assignee, or proxy, to:

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

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

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

9 ~~(16)~~ (17) “Governor” means:

10 (A) a director of a business corporation;

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

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

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

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

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

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

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

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

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

20 (K) a any other person by or under whose authority the powers of an entity are

21 exercised and under whose direction the ~~business activities~~ and affairs of the entity are managed

22 pursuant to the organic law and organic rules of the entity.

23 ~~(17)~~ (18) “Interest” means:

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

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

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

4 (A) a share in a business corporation;

5 (B) a membership in a nonprofit corporation;

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

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

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

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

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

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

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

13 business trust; or

14 (J) a governance interest or distributional interest in any other type of

15 unincorporated entity.

16 ~~(18)~~ (19) "Interest exchange" means a transaction authorized by [Article] 3.

17 ~~(19)~~ (20) "Interest holder" means: ~~a direct holder of an interest.~~

18 (A) a shareholder of a business corporation;

19 (B) a member of a nonprofit corporation;

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

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

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

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

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

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

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

4 (J) a beneficiary or beneficial owner of a statutory trust, business trust, or
5 common-law business trust; or

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

7 ~~(20)~~ (21) “Interest holder liability” means:

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

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

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

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

16 (22) “Jurisdiction”, used to refer to a political entity, means the United States, a state, a
17 foreign country, or a political subdivision of a foreign country.

18 ~~(21)~~ (23) “Jurisdiction of ~~organization~~ formation” ~~of an entity~~ means the jurisdiction
19 whose law includes the organic law of ~~the~~ an entity.

20 ~~(22) “LIABILITY” MEANS A DEBT, OBLIGATION, OR ANY OTHER LIABILITY ARISING IN ANY~~
21 ~~MANNER, REGARDLESS OF WHETHER IT IS SECURED OR WHETHER IT IS CONTINGENT.~~

22 ~~(23)~~ (24) “Merger” means a transaction in which two or more merging entities are
23 combined into a surviving entity pursuant to a ~~filing with~~ record filed by the [Secretary of State].

1 ~~(24)~~ (25) “Merging entity” means an entity that is a party to a merger and exists
2 immediately before the merger becomes effective.

3 ~~(25)~~ (26) “Nonprofit corporation” means a corporation whose internal affairs are
4 governed by [the Model Nonprofit Corporation Act].

5 ~~(26)~~ (27) “Organic law” means the ~~statutes, if any, other than this [act],~~ law of an
6 entity’s jurisdiction of formation governing the internal affairs of ~~an~~ the entity.

7 ~~(27)~~ (28) “Organic rules” means the public organic ~~document~~ record and private organic
8 rules of an entity.

9 ~~(28)~~ (29) “Person” means an individual, business corporation, nonprofit corporation,
10 ~~estate, trust,~~ partnership, limited partnership, limited liability company, [general cooperative
11 association,] limited cooperative association, unincorporated nonprofit association, statutory
12 trust, business or similar trust, common-law business trust, estate, trust, association, joint
13 venture, public corporation, government, or governmental subdivision, agency, or
14 instrumentality, or any other legal or commercial entity.

15 ~~(29)~~ (30) “Plan” means a plan of merger, plan of interest exchange, plan of conversion,
16 or plan of domestication.

17 (31) “PLAN OF CONVERSION” MEANS A PLAN UNDER SECTION 402.

18 (32) “PLAN OF DOMESTICATION” MEANS A PLAN UNDER SECTION 502.

19 (33) “PLAN OF INTEREST EXCHANGE” MEANS A PLAN UNDER SECTION 302.

20 (34) “PLAN OF MERGER” MEANS A PLAN UNDER SECTION 202.

21 ~~(30)~~ (35) “Private organic rules” ~~mean~~ means the rules, whether or not in a record, that
22 govern the internal affairs of an entity, are binding on all of its interest holders, and are not part
23 of its public organic ~~document~~ record, if any. The term includes:

- 1 (A) the bylaws of a business corporation;
- 2 (B) the bylaws of a nonprofit corporation;
- 3 (C) the partnership agreement of a general partnership;
- 4 (D) the partnership agreement of a limited partnership;
- 5 (E) the operating agreement of a limited liability company;
- 6 [(F) the bylaws of a general cooperative association;]
- 7 (G) the bylaws of a limited cooperative association;
- 8 (H) the governing principles of an unincorporated nonprofit association; and
- 9 (I) the trust instrument of a statutory trust or similar rules of a business trust or
- 10 common-law business trust.

11 (36) “Property” means all property, whether real, personal, or mixed or tangible or
12 intangible, or any right or interest therein.

13 ~~(34)~~ (37) “Protected agreement” means:

- 14 (A) a record evidencing indebtedness and any related agreement in effect on [the
- 15 effective date of this [act]];
- 16 (B) an agreement that is binding on an entity on [the effective date of this [act]];
- 17 (C) the organic rules of an entity in effect on [the effective date of this [act]]; or
- 18 (D) an agreement that is binding on any of the governors or interest holders of an
- 19 entity on [the effective date of this [act]].

20 ~~(32)~~ (38) “Public organic document record” means the public record the filing of which
21 by the [Secretary of State] creates is required to form an entity, and any amendment to or
22 restatement of that record. The term includes:

- 23 (A) the articles of incorporation of a business corporation;

1 (B) the articles of incorporation of a nonprofit corporation;

2 (C) the certificate of limited partnership of a limited partnership;

3 (D) the certificate of organization of a limited liability company;

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

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

6 (G) the certificate of trust of a statutory trust or similar record of a business trust.

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

9 ~~(34)~~ (39) “Record” means information that is inscribed on a tangible medium or that is
10 stored in an electronic or other medium and is retrievable in perceivable form.

11 (40) “Registered foreign entity” means a foreign entity that is registered to do business
12 in this state pursuant to a record filed by the [Secretary of State].

13 ~~(35)~~ (41) “Sign” means, with present intent to authenticate or adopt a record:

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

15 (B) to attach to or logically associate with the record an electronic symbol,
16 sound, symbol, or process.

17 (42) “State” means a state of the United States, the District of Columbia, Puerto Rico,
18 the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction
19 of the United States.

20 (43) “STATEMENT OF CONVERSION” MEANS A STATEMENT UNDER SECTION 405.

21 (44) “STATEMENT OF DOMESTICATION” MEANS A STATEMENT UNDER SECTION 505.

22 (45) “STATEMENT OF INTEREST EXCHANGE” MEANS A STATEMENT UNDER SECTION 305.

23 (46) “STATEMENT OF MERGER” MEANS A STATEMENT UNDER SECTION 205.

1 ~~(36)~~ (47) “Surviving entity” means the entity that continues in existence after or is
2 created by a merger UNDER [ARTICLE] 2.

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

5 (48) “Transfer” includes:

6 (A) an assignment;

7 (B) a conveyance;

8 (C) a sale;

9 (D) a lease;

10 (E) an encumbrance, including a mortgage or security interest;

11 (F) a gift; and

12 (G) a transfer by operation of law.

13 ~~(38)~~ (49) “Type of entity;” ~~with regard to an entity,~~ means a generic form of entity:

14 (A) recognized at common law; or

15 (B) ~~organized~~ formed under an organic law, whether or not some entities

16 ~~organized~~ formed under that ~~organic~~ law are subject to provisions of that law that create different
17 categories of the form of entity.

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

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

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

23 (c) A transaction effected under this [act] may not create or impair any right or

1 obligation on the part of a person under a provision of the law of this state other than this [act]
2 relating to a change in control, takeover, business combination, control-share acquisition, or
3 similar transaction involving a domestic merging, acquired, converting, or domesticating
4 business corporation unless:

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

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

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

11 (a) A domestic or foreign entity that is required to give notice to, or obtain the approval
12 of, a governmental agency or officer ~~IN ORDER~~ OF THIS STATE to be a party to a merger must give
13 the notice or obtain the approval ~~IN ORDER~~ to be a party to an interest exchange, conversion, or
14 domestication.

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

22 **SECTION 105. STATUS OF FILINGS.** A filing under this [act] signed by a domestic
23 entity becomes part of the public organic ~~document~~ record of the entity if the entity's organic

1 law provides that similar filings under that law become part of the public organic document
2 record of the entity.

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

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

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

15 **SECTION 109. APPRAISAL RIGHTS.**

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

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

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

23 (b) An interest holder of a domestic merging, acquired, converting, or domesticating

1 entity is entitled to contractual appraisal rights in connection with a transaction under this [act] to
2 the extent provided in:

3 (1) ~~in~~ the entity's organic rules;

4 (2) ~~in~~ the plan; or

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

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

10 **[SECTION 110. EXCLUDED ENTITIES AND TRANSACTIONS.]**

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

12 (1)

13 (2).

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

15 (1)

16 (2)

17 (~~3~~).

18 **[ARTICLE] 2**

19 **MERGER**

20 **SECTION 201. MERGER AUTHORIZED.**

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

22 (1) one or more domestic entities may merge with one or more domestic or

23 foreign entities into a domestic or foreign surviving entity; and

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

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

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

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

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

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

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

11 ~~(5) [ARTICLE 12 OF THE PROTOTYPE LIMITED LIABILITY COMPANY ACT];~~

12 ~~(6) [ARTICLE 9 OF THE UNIFORM LIMITED LIABILITY COMPANY ACT (1996)];~~

13 ~~(7)-(5) [ARTICLE 7 OF THE UNIFORM STATUTORY TRUST ENTITY ACT];~~

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

15 ~~(8) (7)~~ [Article ~~#5~~ 16 of the Uniform Limited Cooperative Association Act
16 (2007)] [; or

17 ~~(9) (8)~~ Cite provisions of any other organic law that has merger provisions for
18 entities of the same type].

19 ~~[(D) THE FOLLOWING ENTITIES MAY NOT PARTICIPATE IN A MERGER UNDER THIS [ARTICLE]:~~

20 ~~(1)~~

21 ~~(2).]~~

22 **SECTION 202. PLAN OF MERGER.**

23 (a) A domestic entity may become a party to a merger under this [article] by approving a

1 plan of merger. The plan must be in a record and contain:

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

4 (2) if the surviving entity is to be created in the merger, a statement to that effect
5 and ~~ITS THE~~ ENTITY'S name, jurisdiction of ~~organization~~ formation, and type of entity;

6 (3) the manner of converting the interests in each party to the merger into
7 interests, securities, obligations, ~~rights to acquire interests or securities, CASH MONEY, or~~ other
8 property, rights to acquire interests or securities, or any combination of the foregoing;

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

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

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

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

18 (b) ~~A~~ In addition to the requirements of subsection (a), a plan of merger may contain any
19 other provision not prohibited by law.

20 **SECTION 203. APPROVAL OF MERGER.**

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

22 (1) by a domestic merging entity:

23 (A) in accordance with the requirements, if any, in its organic law and

1 organic rules for approval of:

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

3 merger; or

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

5 approval by a vote of the interest holders of the business corporation; or

6 (B) if neither its organic law nor organic rules provide for approval of a

7 merger described in subparagraph (A)(ii), by all of the interest holders of the entity entitled to

8 vote on or consent to any matter; and

9 (2) in a record, by each interest holder of a domestic merging entity that will

10 have interest holder liability for debts, obligations, and other liabilities that arise after the merger

11 becomes effective, unless, in the case of an entity that is not a business corporation or nonprofit

12 corporation:

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

14 merger in which some or all of its interest holders become subject to interest holder liability by

15 the vote or consent of fewer than all ~~of~~ the interest holders; and

16 (B) the interest holder ~~VOTED FOR OR~~ consented in a record to OR VOTED

17 FOR that provision of the organic rules or became an interest holder after the adoption of that

18 provision.

19 (b) A merger UNDER THIS [ARTICLE] involving a foreign merging entity is not effective

20 unless ~~it~~ the merger is approved by the foreign entity in accordance with the law of the foreign

21 entity's jurisdiction of ~~organization~~ formation.

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

23 (a) A plan of merger ~~OF A DOMESTIC MERGING ENTITY~~ may be amended ONLY WITH THE

1 CONSENT OF EACH PARTY TO THE PLAN, EXCEPT AS OTHERWISE PROVIDED IN THE PLAN.

2 (B) A DOMESTIC MERGING ENTITY MAY APPROVE AN AMENDMENT OF A PLAN OF MERGER:

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

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

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

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

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

18 ~~(B)~~ (C) After a plan of merger has been approved ~~BY A DOMESTIC MERGING ENTITY~~ and
19 before a statement of merger becomes effective, the plan may be abandoned: ~~(1)~~ as provided in
20 the plan; ~~OR, (2) UNLESS~~ UNLESS prohibited by the plan, A DOMESTIC MERGING ENTITY MAY
21 ABANDON THE PLAN in the same manner as the plan was approved.

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

1 effective, a statement of abandonment, signed ~~on behalf of~~ by a ~~MERGING ENTITY PARTY TO THE~~
2 ~~PLAN~~, must be ~~filed with~~ delivered to the [Secretary of State] for filing before ~~the time~~ the
3 statement of merger becomes effective. The statement of abandonment takes effect upon filing,
4 and the merger is abandoned and does not become effective. The statement of abandonment
5 must contain:

6 (1) the name of each ~~MERGING OR SURVIVING ENTITY THAT IS A DOMESTIC ENTITY~~
7 ~~OR A QUALIFIED FOREIGN ENTITY~~ PARTY TO THE PLAN OF MERGER;

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

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

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

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

15 (b) A statement of merger must contain:

16 (1) the name, jurisdiction of ~~organization~~ formation, and type of entity of each
17 merging entity that is not the surviving entity;

18 (2) the name, jurisdiction of ~~organization~~ formation, and type of entity of the
19 surviving entity;

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

23 (4) a statement that the merger was approved by each domestic merging entity, if

1 any, in accordance with this [article] and by each foreign merging entity, if any, in accordance
2 with the law of its jurisdiction of ~~organization~~ formation;

3 (5) if the surviving entity exists before the merger and is a domestic filing entity,
4 any amendment to its public organic ~~document~~ record approved as part of the plan of merger;

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

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

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

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

14 (d) If the surviving entity is a domestic entity, its public organic ~~document~~ record, if any,
15 must satisfy the requirements of the law of this state, except that ~~IF~~ THE PUBLIC ORGANIC RECORD
16 does not need to be signed and may omit any provision that is not required to be included in a
17 restatement of the public organic ~~document~~ record.

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

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

1 date and time specified in the statement of merger.

2 **SECTION 206. EFFECT OF MERGER.**

3 (a) When a merger UNDER THIS [ARTICLE] becomes effective:

4 (1) the surviving entity continues or comes into existence;

5 (2) each merging entity that is not the surviving entity ceases to exist;

6 (3) all property of each merging entity vests in the surviving entity without
7 transfer, assignment, reversion, or impairment;

8 (4) all debts, obligations, and other liabilities of each merging entity are debts,
9 obligations, and other liabilities of the surviving entity;

10 (5) except as otherwise provided by law ~~OTHER THAN THIS [ACT]~~ or the plan of
11 merger, all of the rights, privileges, immunities, powers, and purposes of each merging entity
12 vest in the surviving entity;

13 (6) if the surviving entity exists before the merger:

14 (A) all of its property continues to be vested in it without transfer,
15 reversion, or impairment;

16 (B) it remains subject to all of its debts, obligations, and other liabilities;

17 and

18 (C) all of its rights, privileges, immunities, powers, and purposes continue
19 to be vested in it;

20 (7) the name of the surviving entity may be substituted for the name of any
21 merging entity that is a party to any pending action or proceeding;

22 (8) if the surviving entity exists before the merger:

23 (A) its public organic ~~document~~ record, if any, is amended as provided in

1 the statement of merger ~~AND IS BINDING ON ITS INTEREST HOLDERS~~; and

2 (B) its private organic rules that are to be in a record, if any, are amended

3 to the extent provided in the plan of merger ~~AND ARE BINDING ON AND ENFORCEABLE BY:~~

4 (i) ~~ITS INTEREST HOLDERS; AND~~

5 (ii) ~~IN THE CASE OF A SURVIVING ENTITY THAT IS NOT A BUSINESS~~

6 ~~CORPORATION OR A NONPROFIT CORPORATION, ANY OTHER PERSON THAT IS A PARTY TO AN~~

7 ~~AGREEMENT THAT IS PART OF THE SURVIVING ENTITY'S PRIVATE ORGANIC RULES;~~

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

9 (A) its public organic ~~document~~ record, if any, is effective ~~AND IS BINDING~~

10 ~~ON ITS INTEREST HOLDERS~~; and

11 (B) its private organic rules are effective ~~AND ARE BINDING ON AND~~

12 ~~ENFORCEABLE BY:~~

13 (i) ~~ITS INTEREST HOLDERS; AND~~

14 (ii) ~~IN THE CASE OF A SURVIVING ENTITY THAT IS NOT A BUSINESS~~

15 ~~CORPORATION OR A NONPROFIT CORPORATION, ANY OTHER PERSON THAT WAS A PARTY TO AN~~

16 ~~AGREEMENT THAT WAS PART OF THE ORGANIC RULES OF A MERGING ENTITY IF THAT PERSON HAS~~

17 ~~AGREED TO BE A PARTY TO AN AGREEMENT THAT IS PART OF THE SURVIVING ENTITY'S PRIVATE~~

18 ~~ORGANIC RULES~~; and

19 (10) the interests in each merging entity ~~that~~ which are to be converted in the

20 merger are converted, and the interest holders of those interests are entitled only to the rights

21 provided to them under the plan of merger and to any appraisal rights they have under Section

22 109 and the merging entity's organic law.

23 (b) Except as otherwise provided in the organic law or organic rules of a merging entity,

1 ~~THE~~ A merger UNDER THIS [ARTICLE] does not give rise to any rights that an interest holder,
2 governor, or third party would otherwise have upon a dissolution, liquidation, or ~~winding-up~~
3 winding up of the merging entity.

4 (c) When a merger UNDER THIS [ARTICLE] becomes effective, a person that did not have
5 interest holder liability with respect to any of the merging entities and that becomes subject to
6 interest holder liability with respect to a domestic entity as a result of a merger has interest
7 holder liability only to the extent provided by the organic law of ~~the~~ that entity and only for
8 those debts, obligations, and other liabilities that arise after the merger becomes effective.

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

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

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

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

20 (4) ~~the~~ The person has whatever rights of contribution from any other person as
21 are provided by ~~THE ORGANIC LAW~~ LAW OTHER THAN THIS [ACT] or THE organic rules of the
22 domestic merging entity with respect to any interest holder liability preserved under paragraph
23 (1) as if the merger had not occurred.

1 (e) When a merger UNDER THIS [ARTICLE] becomes effective, a foreign entity that is the
2 surviving entity:

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

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

7 (f) When a merger UNDER THIS [ARTICLE] becomes effective, the ~~certificate of authority~~
8 ~~or other foreign qualification~~ registration to do business in this state of any foreign merging
9 entity that is not the surviving entity is canceled.

10 **[ARTICLE] 3**

11 **INTEREST EXCHANGE**

12 **SECTION 301. INTEREST EXCHANGE AUTHORIZED.**

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

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

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

22 (b) Except as otherwise provided in this section, by complying with the provisions of
23 this [article] applicable to foreign entities a foreign entity may be the acquiring or acquired entity

1 in an interest exchange under this [article] if the interest exchange is authorized by the law of the
2 foreign entity's jurisdiction of ~~organization~~ formation.

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

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

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

9 (2).]

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

12 ~~(1)~~

13 ~~(2).~~

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

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

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

18 (2) the name, jurisdiction of ~~organization~~ formation, and type of entity of the
19 acquiring entity;

20 (3) the manner of converting the interests in the acquired entity into interests,
21 securities, obligations, ~~rights to acquire interests or securities, CASH MONEY, or~~ other property,
22 rights to acquire interests or securities, or any combination of the foregoing;

23 (4) any proposed amendments to the public organic ~~document~~ record, if any, or

1 private organic rules that are, or are proposed to be, in a record of the acquired entity;
2 (5) the other terms and conditions of the interest exchange; and
3 (6) any other provision required by the law of this state or the organic rules of the
4 acquired entity.

5 (b) ~~A~~ In addition to the requirements of subsection (a), a plan of interest exchange may
6 contain any other provision not prohibited by law.

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

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

9 (1) by a domestic acquired entity:

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

12 (B) except as otherwise provided in subsection (d), if neither its organic
13 law nor organic rules provide for approval of an interest exchange, in accordance with the
14 requirements, if any, in its organic law and organic rules for approval of:

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

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

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

23 (2) in a record, by each interest holder of a domestic acquired entity that will

1 have interest holder liability for debts, obligations, and other liabilities that arise after the interest
2 exchange becomes effective, unless, in the case of an entity that is not a business corporation or
3 nonprofit corporation:

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

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

10 (b) An interest exchange involving a foreign acquired entity is not effective unless it is
11 approved by the foreign entity in accordance with the law of the foreign entity's jurisdiction of
12 ~~organization~~ formation.

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

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

20 **SECTION 304. AMENDMENT OR ABANDONMENT OF PLAN OF INTEREST**
21 **EXCHANGE.**

22 (a) A plan of interest exchange ~~of a domestic acquired entity~~ may be amended only with
23 the consent of each party to the plan, except as otherwise provided in the plan.

1 **(b) A domestic acquired entity may approve an amendment of a plan of interest**

2 **exchange:**

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

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

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

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

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

18 ~~(b)~~ (c) After a plan of interest exchange has been approved ~~by a domestic acquired entity~~
19 and before a statement of interest exchange becomes effective, the plan may be abandoned: ~~(1)~~
20 as provided in the plan; ~~or, (2) unless~~ Unless prohibited by the plan, a domestic acquired entity
21 may abandon the plan in the same manner as the plan was approved.

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

1 effective, a statement of abandonment, signed ~~on behalf of~~ by the acquired entity, must be ~~filed~~
2 ~~with~~ delivered to the [Secretary of State] for filing before ~~the time~~ the statement of interest
3 exchange becomes effective. The statement of abandonment takes effect upon filing, and the
4 interest exchange is abandoned and does not become effective. The statement of abandonment
5 must contain:

- 6 (1) the name of the acquired entity;
- 7 (2) the date on which the statement of interest exchange was ~~filed~~ delivered to
8 the [Secretary of State] for filing; and
- 9 (3) a statement that the interest exchange has been abandoned in accordance with
10 this section.

11 **SECTION 305. STATEMENT OF INTEREST EXCHANGE; EFFECTIVE DATE.**

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

14 (b) A statement of interest exchange must contain:

- 15 (1) the name and type of the acquired entity;
- 16 (2) the name, jurisdiction of ~~organization~~ formation, and type of entity of the
17 acquiring entity;
- 18 (3) if the statement of interest exchange is not to be effective upon filing, the
19 later date and time on which it will become effective, which may not be more than 90 days after
20 the date of filing;
- 21 (4) a statement that the plan of interest exchange was approved by the acquired
22 entity in accordance with this [article]; and
- 23 (5) any amendments to the acquired entity's public organic ~~document~~ record, if

1 any, approved as part of the plan of interest exchange.

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

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

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

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

13 (a) When an interest exchange becomes effective:

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

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

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

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

1 enforceable by:

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

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

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

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

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

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

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

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

2 ~~(1)~~

3 ~~(2).}~~

4 **SECTION 402. PLAN OF CONVERSION.**

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

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

8 (2) the name, jurisdiction of ~~organization~~ formation, and type of entity of the
9 converted entity;

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

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

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

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

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

20 (b) ~~A~~ In addition to the requirements of subsection (a), a plan of conversion may contain
21 any other provision not prohibited by law.

22 **SECTION 403. APPROVAL OF CONVERSION.**

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

1 (1) by a domestic converting entity:

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

3 approval of a conversion;

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

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

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

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

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

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

10 that type of merger; or

11 (C) if neither its organic law nor organic rules provide for approval of a

12 conversion or a merger described in subparagraph (B)(ii), by all of the interest holders of the

13 entity entitled to vote on or consent to any matter; and

14 (2) in a record, by each interest holder of a domestic converting entity that will

15 have interest holder liability for debts, obligations, and other liabilities that arise after the

16 conversion becomes effective, unless, in the case of an entity that is not a business or nonprofit

17 corporation:

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

19 conversion or a merger in which some or all of its interest holders become subject to interest

20 holder liability by the vote or consent of fewer than all of the interest holders; and

21 (B) the interest holder ~~voted for or~~ consented in a record to or voted for

22 that provision of the organic rules or became an interest holder after the adoption of that

23 provision.

1 (b) A conversion of a foreign converting entity is not effective unless it is approved by
2 the foreign entity in accordance with the law of the foreign entity's jurisdiction of ~~organization~~
3 formation.

4 **SECTION 404. AMENDMENT OR ABANDONMENT OF PLAN OF**
5 **CONVERSION.**

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

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

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

12 (A) the amount or kind of interests, securities, obligations, ~~rights to~~
13 ~~acquire interests or securities, CASH MONEY, or other property, rights to acquire interests or~~
14 securities, or any combination of the foregoing, to be received by any of the interest holders of
15 the converting entity under the plan;

16 (B) the public organic ~~document~~ record, if any, or private organic rules of
17 the converted entity that will be in effect immediately after the conversion becomes effective,
18 except for changes that do not require approval of the interest holders of the converted entity
19 under its organic law or organic rules; or

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

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

- 1 (1) as provided in the plan; or
2 (2) unless prohibited by the plan, in the same manner as the plan was approved.

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

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

- 9 (1) the name of the converting entity;
10 (2) the date on which the statement of conversion was ~~filed~~ delivered to the
11 [Secretary of State] for filing; and

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

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

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

17 (b) A statement of conversion must contain:

18 (1) the name, jurisdiction of ~~organization~~ formation, and type of entity of the
19 converting entity;

20 (2) the name, jurisdiction of ~~organization~~ formation, and type of entity of the
21 converted entity;

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

1 filing;

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

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

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

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

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

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

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

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

3 **SECTION 406. EFFECT OF CONVERSION.**

4 (a) When a conversion becomes effective:

5 (1) the converted entity is:

6 (A) organized under and subject to the organic law of the converted
7 entity; and

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

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

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

13 (4) except as otherwise provided by law ~~other than this [act]~~ or the plan of
14 conversion, all of the rights, privileges, immunities, powers, and purposes of the converting
15 entity remain in the converted entity;

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

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

20 (7) if the converted entity is a limited liability partnership, its {statement of
21 qualification} is effective simultaneously;

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

1 by:

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

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

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

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

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

18 (d) When a conversion becomes effective:

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

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

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

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

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

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

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

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

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

18 **[ARTICLE] 5**

19 **DOMESTICATION**

20 **SECTION 501. DOMESTICATION AUTHORIZED.**

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

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

5 ~~(c) WHEN THE TERM DOMESTIC ENTITY IS USED IN THIS [ARTICLE] WITH REFERENCE TO A~~
6 ~~FOREIGN JURISDICTION, IT MEANS AN ENTITY WHOSE INTERNAL AFFAIRS ARE GOVERNED BY THE~~
7 ~~LAW OF THE FOREIGN JURISDICTION.~~

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

12 [(e) ~~The following entities may not engage in a domestication under this~~ This [article]
13 does not apply to the domestication of:

14 (1) [a business corporation, if the state has adopted Subchapter 9B of the Model
15 Business Corporation Act]; OR

16 ~~(2) A LIMITED LIABILITY COMPANY, IF THE STATE HAS ENACTED ARTICLE 10 OF THE~~
17 ~~UNIFORM LIMITED LIABILITY COMPANY ACT (2006)]; OR~~

18 ~~(3)~~ (2).

19 **SECTION 502. PLAN OF DOMESTICATION.**

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

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

23 (2) the name and jurisdiction of ~~organization~~ formation of the domesticated

1 entity;

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

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

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

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

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

12 (b) ~~A~~ In addition to the requirements of subsection (a), a plan of domestication may
13 contain any other provision not prohibited by law.

14 **SECTION 503. APPROVAL OF DOMESTICATION.**

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

16 (1) by a domestic domesticating entity:

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

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

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

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

1 approval by a vote of the interest holders of the business corporation, as if the domestication
2 were that type of merger; or

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

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

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

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

16 (b) A domestication of a foreign domesticating entity is not effective unless it is
17 approved in accordance with the law of the foreign entity's jurisdiction of ~~organization~~
18 formation.

19 **SECTION 504. AMENDMENT OR ABANDONMENT OF PLAN OF**
20 **DOMESTICATION.**

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

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

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

4 (A) the amount or kind of interests, securities, obligations, ~~rights to~~
5 ~~acquire interests or securities, CASH MONEY, or~~ other property, rights to acquire interests or
6 securities, or any combination of the foregoing, to be received by any of the interest holders of
7 the domesticating entity under the plan;

8 (B) the public organic ~~document~~ record, if any, or private organic rules of
9 the domesticated entity that will be in effect immediately after the domestication becomes
10 effective, except for changes that do not require approval of the interest holders of the
11 domesticated entity under its organic law or organic rules; or

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

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

16 (1) as provided in the plan; or

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

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

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

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

6 (a) A statement of domestication must be signed ~~on behalf of~~ by the domesticating entity

7 and ~~filed with~~ delivered to the [Secretary of State] for filing.

8 (b) A statement of domestication must contain:

9 (1) the name, jurisdiction of ~~organization~~ formation, and type of the

10 domesticating entity;

11 (2) the name and jurisdiction of ~~organization~~ formation of the domesticated

12 entity;

13 (3) if the statement of domestication is not to be effective upon filing, the later

14 date and time on which it will become effective, which may not be more than 90 days after the

15 date of filing;

16 (4) if the domesticating entity is a domestic entity, a statement that the plan of

17 domestication was approved in accordance with this [article] or, if the domesticating entity is a

18 foreign entity, a statement that the domestication was approved in accordance with the law of its

19 jurisdiction of ~~organization~~ formation;

20 (5) if the domesticated entity is a domestic filing entity, its public organic

21 ~~document~~ record, as an attachment;

22 (6) if the domesticated entity is a domestic limited liability partnership, its

23 {statement of qualification}, as an attachment; and

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

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

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

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

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

18 **SECTION 506. EFFECT OF DOMESTICATION.**

19 (a) When a domestication becomes effective:

20 (1) the domesticated entity is:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 (d) When a domestication becomes effective:

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

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

18 (3) the organic law of a domestic domesticating entity continues to apply to the
19 release, collection, or discharge of any interest holder liability preserved under paragraph (1) as
20 if the domestication had not occurred; and

21 (4) a person has whatever rights of contribution from any other person as are
22 provided by ~~the organic~~ other law or the organic rules of a domestic domesticating entity with
23 respect to any interest holder liability preserved under paragraph (1) as if the domestication had

1 not occurred.

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

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

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

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

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

13 **[ARTICLE] 6**

14 **MISCELLANEOUS PROVISIONS**

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

18 **SECTION 602. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL**
19 **AND NATIONAL COMMERCE ACT.** This [act] modifies, limits, ~~and~~ or supersedes the
20 ~~federal~~ Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § Section 7001,
21 et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. § Section
22 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that
23 act, 15 U.S.C. § Section 7003(b).

1 **SECTION 603. SEVERABILITY CLAUSE.** *If any provision of this [act] or its*
2 *application to any person or circumstance is held invalid, the invalidity does not affect other*
3 *provisions or applications of this [act] which can be given effect without the invalid provision or*
4 *application, and to this end the provisions of this [act] are severable.*

5 **Legislative Note:** *Include this section only if this state lacks a general severability statute or a*
6 *declaration by the highest court of this state stating a general rule of severability.*

7
8 **SECTION ~~603~~ 604. CONFORMING AMENDMENTS AND REPEALS.** [See
9 Appendix 2.]

10 **SECTION ~~604~~ 605. SAVINGS CLAUSE.** This [act] does not affect an action or
11 proceeding commenced or right accrued before [the effective date of this [act]].

12 **SECTION ~~605~~ 606. EFFECTIVE DATE.** This [act] takes effect [~~January 1, 20__~~] . . .