

SB

101

<TARGET><BILL>SB 101</BILL><SUBJECT>SB
101</SUBJECT><COMM>SJUD27</COMM></TARGET>

SENATE COMMITTEE REPORT

First Committee of Referral

DATE: 3/14/11

FURTHER: Finance

Date of 5-Day Notice: _____
(in accordance with Uniform Rule 23)

DATE TURNED
IN TO OFFICE: 3/30/11

Judiciary Committee considered SENATE BILL NO. 101

SB 101-ENTITY TRANSACTIONS ACT

"An Act adopting the Alaska Entity Transactions Act; relating to changing the form of entities, including corporations, partnerships, limited liability companies, business trusts, and other organizations; amending Rule 79, Alaska Rules of Civil Procedure, and Rules 602(b)(2), 602(c), and 605.5, Alaska Rules of Appellate Procedure; and providing for an effective date."

and recommends:

- be replaced with CS _____ (_____) Same Title New Title
- adopt previous CS _____ (_____) Same Title New Title
- attached amendment(s)
- adopt _____ Letter of Intent
- further referral to _____ Committee

Dept Abbr.	
ADM	LEG
CED	LAW
COR	LWF
CRT	MVA
EED	DNR
DEC	DPS
DFG	REV
GOV	DOT
DHS	UA

NEW FISCAL NOTE(S)				
Dept.	Fiscal	Indet.	Zero	FN #
CED			✓	

PREVIOUS FISCAL NOTE(S)				
Dept.	Fiscal	Indet.	Zero	FN #

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	PRINTED LAST NAME	DO PASS	DO NOT PASS	NO REC	AMEND
	Coghill			✓	
	Wiblechowski			✓	
	Pasqua	X			
CHAIR:	Frenu			✓	



Senator Joe Paskvan

Alaska State Senate • District E • Fairbanks • Ft Wainwright

Senate Bill 101: Entity Transactions Act Senate Judiciary Committee March 25, 2011

Contents of Bill Packet

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6. SB 101 Back-Up: Uniform Law Commission's Legislative Fact Sheet
7. SB 101 Back-Up: Council of State Governments (CSG) 2011 Suggested State Legislation: Model Entity Transactions Act

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Sponsor Statement Senate Bill 101: Entity Transactions Act

Senate Bill 101 conforms to the Uniform Law Commissioners' Model Entity Transaction Act (META). If implemented in the State of Alaska, this legislation will help facilitate transactions between more than one form of entity, improve the existing business climate in Alaska, and help reduce unnecessary administrative and legal burdens currently imposed on Alaska companies.

During the past twenty years many new types of business entities – including limited liability companies, limited liability partnerships, and limited liability limited partnerships – have been recognized under state law. As a result of the proliferation of new entity forms, many businesses now utilize various types of entities in their organizational structures. The relaxation of federal tax rules governing entity classification has led to an increase in the volume of restructuring and acquisition transactions by and among the various types of entity forms.

Because of the lack of clear statutory authority allowing transactions between more than one form of entity, these transactions have often required the use of multiple indirect steps, as opposed to a single transaction.

Senate Bill 101 will offer new statutory authority to permit cross-entity transactions in order to remain responsive to the needs of Alaskan companies and should be enacted in order to allow Alaska businesses the opportunity to engage in cross-entity transactions.

Adopting SB 101 will be an important step towards bringing Alaska more into the mainstream of statutory business law.

I urge your support of this legislation.

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FISCAL NOTE

STATE OF ALASKA
2011 LEGISLATIVE SESSION

Fiscal Note Number _____
 Bill Version SB 101
 () Publish Date _____

Identifier (file name) SB101-CCED-CBPL-03-14-11 Dept. Affected DCCED
 Title An Act adopting the Alaska Entity Transactions Act Appropriation Corporations, Business and Professional Licensing
 Allocation Corporations, Business and Professional Licensing
 Sponsor Senator Paskvan
 Requester Senate Judiciary OMB Component Number 2360

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information						
		FY 2012	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
OPERATING EXPENDITURES								
Personal Services								
Travel								
Services								
Commodities								
Capital Outlay								
Grants								
Miscellaneous								
TOTAL OPERATING		0.0	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES								
-----------------------------	--	--	--	--	--	--	--	--

CHANGE IN REVENUES								
---------------------------	--	--	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts								
1003 GF Match								
1004 GF								
1005 GF/Program Receipts								
1037 GF/Mental Health								
Other (please identify)								
TOTAL		0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2011) cost 0.0

POSITIONS

Full-time								
Part-time								
Temporary								

Why this fiscal note differs from previous version (if initial version, please note as such)

Initial Version

Prepared by Don Habeger, Director
 Division Corporations, Business and Professional Licensing
 Approved by Susan K. Bell, Commissioner
Commerce, Community, and Economic Development

Phone 465-2536
 Date/Time 3/18/11 9:00 AM
 Date 3/18/2011

FISCAL NOTE

STATE OF ALASKA
2011 LEGISLATIVE SESSION

BILL NO. SB 101

Analysis

The financial impact to the Division for implementing the Alaska Entity Transaction Act (Act) is nominal.

Two states have adopted the Model Entity Transaction Act, Kansas and Idaho. Kansas was not able to provide statistics regarding how many entities have Merged, Converted, Domesticated, or Interest Exchanged in accordance with the Act. Idaho adopted the Act in July of 2007 and has had 196 entities take advantage of the Act.

The filings generated by the Act will be easily absorbed into the staff's normal document processing duties and no additional staff would be required. The Division receives a combined average of 200 regular mergers and conversions annually so a few more will have no impact.

Regulations for fees will need to be established. This should not be costly or time consuming since the fee language used throughout current regulations is adequate to establish fees for the Act.

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Memorandum

To: Senator Joe Paskvan, Chair, Senate labor and Commerce Committee
From: Steve Miller, Sherman & Howard L.L.C.
Date: October 26, 2009
Re: Update of Alaska Business Statutes

BACKGROUND

During the past twenty years many new types of business entities – including limited liability companies, limited liability partnerships, and limited liability limited partnerships – have been recognized under state law. As a result of the proliferation of new entity forms, many businesses now utilize various types of entities in their organizational structures. The relaxation of federal tax rules governing entity classification has led to an increase in the volume of restructuring and acquisition transactions by and among the various types of entity forms. These transactions have often required the use of multiple indirect steps, as opposed to a single transaction, because of the lack of clear statutory authority allowing transactions between more than one form of entity.

Many states have addressed this need by providing new legislation to facilitate transactions between more than one form of entity. Some states have added provisions in their individual entity laws to authorize entities organized under each law to convert to other forms of entities or to allow mergers between entity forms. For example, Delaware has adopted separate provisions in both its General Corporation Law and its Limited Liability Company Act that, functioning together, allow a merger between a corporation and a limited liability company. See DEL. CODE ANN. tit. 8, §§ 263.264 (2008) (corporations), DEL. CODE ANN. tit. 6, §§ 18-209 (2008) (limited liability companies). Other states have taken a more comprehensive approach and have chosen to enact new statutes that address cross-entity mergers and conversions in one act and central location. These statutes, known as “junction box” statutes, contain provisions allowing all types of corporate and unincorporated entities to engage in mergers, conversions,

and, in some cases, interest exchanges and domestication transactions. See ALA. CODE §§I 10-15-1 to -7 (2007); COLO. REV. STAT. ANN. §§ 7-90-101 to -604 (West 2008).

ALASKA LAW

As noted above, many states have adopted new or amended existing provisions to facilitate transactions between different entity forms. While states have taken varying approaches to inter-entity transactions, virtually all states have addressed certain types of transactions. In fact, Alaska is the *only* state that does not authorize a limited liability company to merge with another form of entity.

Currently Alaska law authorizes only the following mergers, consolidations and conversions:

- two or more domestic corporations may merge, Alaska Stat. § 10.06.530;
- one or more foreign corporations and one or more domestic corporations may be merged or consolidated, or participate in an exchange, Alaska Stat. § 10.06.562;
- a limited liability company may merge or consolidate with or into a limited liability company or a foreign limited liability company, Alaska Stat. § 10.50.500;
- any other entity may convert to a limited liability company, Alaska Stat. § 10.50.570;
- any other entity may convert to a limited partnership, Alaska Stat. § 32.11.095; and
- a partnership may be merged with one or more partnerships or limited partnerships. Alaska Stat. § 32.06.905.

As a result of the limited provisions governing inter-entity transactions, Alaska businesses are required to complete restructuring transactions in two or three indirect steps rather than directly in a single transaction. For example, an Alaska limited liability company cannot merge directly into an Alaska corporation. Nevertheless, a similar result can be obtained by (i) forming a foreign limited liability company; (ii) merging the Alaska limited liability company with and into the foreign limited liability company; (iii) converting the surviving entity of the merger, the foreign limited liability company, into a foreign corporation pursuant to the provisions of that state's business laws; and (iv) merging the foreign corporation with and into an Alaska corporation. Likewise, an Alaska limited liability company could be converted into an Alaska corporation through the use of foreign entities to facilitate the conversion.

While it may be theoretically possible to attain many of the same results accomplished by a comprehensive inter-entity merger or conversion statute without having such a statute

available, it is certainly much more efficient and economical to accomplish inter-entity transactions in a single step. As noted by the National Conference of Commissioners on Uniform State Laws (“NCCUSL”) in connection with the adoption of the Model Entity Transactions Act (discussed *infra*):

The problem with mergers, conversions, interest exchanges and changing the location of entities is that an entity involved may have to be dissolved to accomplish the desired end. This means technically winding down the business, satisfying creditors and interest holders in the wind down, and potentially incurring adverse tax consequences. This is a burden when the objective is not to dissolve the business but to continue it in another form or another location. The hazards of the process are many and very costly. A statute that allows these events to occur without dissolving at least one of the entities involved will increase efficiency and lower costs . . . Cross-entity transactions should be available.

Model Entity Transactions Act Summary, (2007), at <http://www.nccusl.org/Update/ActSearchResults.aspx>. Adopting new legislation in Alaska to facilitate transactions between more than one form of entity would improve the existing business climate in Alaska and help reduce unnecessary administrative and legal burdens currently imposed on Alaska companies.

MODEL & STATE LAW PROVISIONS

Both NCCUSL and the American Bar Association (“ABA”) have undertaken efforts in recent years to facilitate transactions between entities. NCCUSL included provisions permitting entities to engage in mergers with other entity forms and authorizing the conversion of one form of entity to another in the Uniform Limited Liability Company Act (1996 and 2006), Uniform Limited Cooperative Association Act (2007), Uniform Partnership Act (1997) and Uniform Limited Partnership Act (2001). Similarly, the ABA amended the Model Business Corporation Act in 1999 to authorize mergers between corporations and other forms of entities, and again in 2002 to authorize the conversion of entities into and out of the corporate form. Unlike a junction box statute, which applies to transactions between multiple entities, each of these statutes only apply if an entity of the type formed under the statute is a party to the transaction.

Given the inherent limitations in the acts previously adopted, NCCUSL and the ABA set out to draft a comprehensive junction box statute that would allow differing forms of entities to merge with each other or convert to other entity forms. The Model Entity Transactions Act (“META”), the most recent version of which is attached to this memorandum as Appendix A, originally was adopted by NCCUSL and the ABA in 2004 and provides a comprehensive statutory framework that addresses all varieties of cross-entity transactions. Under META, all types of corporate and unincorporated organizations may engage in mergers, conversions, interest exchanges (essentially a triangular merger accomplished without the use of a transitory

third party), and domestications (a transaction in which an existing entity moves its jurisdiction of organization to another state while still retaining whatever form it had before the domestication).

Implementation of META or a similar junction box statute would require conforming amendments and repeals to Alaska's existing business statutes. Appendix 2 of META provides a guide for analyzing existing statutes to determine which statutes should be amended or repealed and whether additional provisions should be added. As noted in Appendix 2, two goals should be paramount in deciding how to approach revisions to existing state laws: "(1) avoiding any potential inconsistency between META's provisions and similar provisions in the state's entity statutes; and (2) making the interplay between META and the state's various entity laws relatively easy to navigate." Model Entity Transactions Act, Appendix 2, (2007), at <http://www.nccusl.org/Update/ActSearchResults.aspx>. The appendix sets forth four separate approaches to achieving this cohesion. The simplest method would likely be to limit existing Alaska entity laws to "same-type transactions". This approach would likely require the least amount of alterations to existing Alaska entity laws, as few amendments should be necessary for entity laws that do not have any cross-type merger provisions. *Id.* At 91.

Some states have found it useful to expand the coverage of their junction box statutes beyond inter-form mergers and conversions to include administrative matters such as entity names, registered agent, effects of dissolution, filings with the filing officer and treatment of foreign entities. These statutes seek to coordinate the non-substantive rules applicable to differing organizational forms, where appropriate, into a comprehensive junction box statute in order to eliminate inadvertent differences that may be set forth in existing entity laws. For instance, "where one statute speaks of a sixty-day grace period for filing a corrective report while another speaks of a two-month period, most would agree that it makes sense to coordinate the provisions..." Robert R. Keatinge, Plumbing and Other Transitional Issues. 58 Bus. Law 1051, 1058 (2003).

Although Alaska's need to act is greatest in the area of inter-entity mergers and conversions, it may be prudent to undertake efforts to coordinate the administrative rules governing Alaska business organizations in connection with any proposed legislation. Attached as Appendix B is a copy of Colorado's Corporations and Associations Act, COLO. REV. STAT. ANN. §§ 7-90-101 to -604. The Corporations and Associations Act is an example of a comprehensive junction box statute that addresses both inter-entity mergers and conversions and administrative matters such as filings, annual reports, entity names and registered agents. As with the adoption of META, implementation of a more comprehensive junction box statute would require a thorough analysis of the overall existing statutory framework in Alaska and could require significant amendments to existing state law.

RECOMMENDATIONS & CONCLUSION

Alaska is in need of new statutory authority to permit cross-entity transactions in order to remain responsive to the needs of Alaskan companies. While Alaska could adopt a patchwork of legislative amendments to its existing entity laws, adoption of a comprehensive junction box statute would help to avoid inconsistencies and conflicts between existing statutes. META is a general statute that is designed to fit with any state's existing entity laws and should be enacted

March 17, 2010

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in an appropriate form in Alaska in order to allow Alaska businesses the opportunity to engage in cross-entity transactions. Adopting META, or enacting similar provisions adopted by other states, would be an important step towards bringing Alaska more into the mainstream of statutory business law.



Entity Transactions Act Summary

The Uniform Law Commissioners have provided unincorporated organization law to the states since the first Uniform Partnership Act in 1914. The current portfolio of uniform acts on unincorporated organizations includes the Uniform Partnership Act (1997), the Uniform Limited Partnership Act (2001), the Uniform Limited Liability Company Act (1996) and the Uniform Unincorporated Nonprofit Organization Act (1996). Corporate law has been the focus of the American Bar Association for at least 50 years. It is responsible for the Model Business Corporation Act and the Model Not-for-Profit Corporation Act. It also prepared a Prototype Limited Liability Company Act. Partnerships, limited partnerships, limited liability partnerships, limited liability limited partnerships, limited liability companies and corporations are the basic entities under American law (business trusts and cooperatives are also growing in importance) that provide the means to aggregate capital, and limit liability where applicable, along with the structure to organize an enterprise, whether it is for profit or nonprofit.

All of this uniform and model act work has made American law particularly efficient for entrepreneurs. Anyone who establishes and develops a business has choices available for the entity that may be chosen to do business. As a business grows, these options also allow for some changes in form and location of the entity chosen. For example, a small enterprise that chooses to be a partnership initially has the opportunity to reorganize as a corporation when the business is big enough to want the advantage of the corporate form. Not-for-profit activities also have a greater array of organizational forms, now including the limited liability company and the limited partnership along with the not-for-profit corporation. American law is particularly flexible and responsive to the needs of both the for-profit and the not-for-profit sectors. American business organization law is the envy of the rest of the world for this reason.

However, more can be done. There is no comprehensive statutory framework for changing entity form, whether for merger of entities, conversion of one entity to another, exchanging interests to merge businesses without merging the entities (called an interest exchange), or for changing the location of the entity (called a domestication). The newest uniform acts on limited liability companies and limited partnerships have limited provisions. The Model Business Corporation Act has been modified to do some of these kinds of transactions. The comprehensive effort had not been done until the Model Entity Transactions Act (META), promulgated by the Uniform Law Commissioners and the American Bar Association in 2004.

The Uniform Law Commissioners and the American Bar Association have a long relationship going back to the founding of the Commissioners. Every drafting committee the Commissioners authorize to work on an act has advisors from the American Bar Association. However, in this instance the need to draw together corporate law with the law of unincorporated organizations, meant a more formal joint relationship was necessary. META is a product of this joint relationship.

The problem with mergers, conversions, interest exchanges and changing the location of entities is that an entity involved may have to be dissolved to accomplish the desired end. This means technically winding down the business, satisfying creditors and interest holders in the winding down, and potentially incurring adverse tax consequences. This is a burden when the objective is not to dissolve the business but to continue it in another form or another location. The hazards of the process are many and very costly. A statute that allows these events to occur without dissolving at least one of the entities involved will increase efficiency and lower costs. A general statute, not limited in scope to less than all of the kinds of entities commonly involved in these transactions, is highly desirable. Cross-entity transactions should be available. That statute should also be one that can be fit with the existing entity law in a state so that it is not necessary to repeal all the existing entity law to accomplish the objective. META is the general statute that is designed to fit in with a state's existing entity law to accomplish the objective.

META governs the course of four kinds of transactions: merger of one entity with another, conversion of an entity to another kind of entity, an interest exchange between two entities so that one of them is controlled by the other without actually merging the two entities and the domestication of an entity originally organized in one state in another state. A merger occurs when one entity acquires another entity and the result is a single entity composed of both the original entities. A conversion occurs when one kind of entity converts to another kind, i.e., a limited liability company converts into a business corporation. An interest exchange occurs when interest holders transfer their interests in one entity to another for interests in the second entity. For example, the holders of all interests in a limited partnership transfer their interests to a corporation in return for shares of stock in the corporation. A domestication occurs when an entity formed under the laws of one state becomes an entity formed in another state, extinguishing its entity status in the first state. The articles of META essentially provide the procedures to accomplish each of these transactions.

META authorizes each of these kinds of transactions. It authorizes different entities to merge, i.e., a corporation may merge with a limited partnership. It authorizes a partnership to convert to a limited liability company. An interest swap may occur between a limited partnership and a limited liability company. A corporation may change its place of organization from one state to another. These are examples of the kinds of transactions authorized. They can occur between an entity in one state and a foreign entity formed originally in another state, providing that the law of the foreign state permits such a transaction.

In each kind of transaction, there must be a plan that is approved by the interest holders in the entities. The plan generally describes the transaction and its effect in detail. Approval of the plan proceeds according to the organic statute and rules that govern the pre-existing entities, or if none, by unanimous consent of all interest holders. If, for example, a partnership agreement governing a limited partnership provides for consent of partners to one of the kinds of transactions subject to META, the agreement would be the organic rules that would determine the approval of the plan. Otherwise all the partners would have to consent.

Once a plan is approved, a statement relevant to the transaction must be filed in the office in a state in which entity statements or charters are normally filed. The filing puts the transaction and the identity of the entity that survives in public records. That entity becomes the entity with the capacity to do business and it has the applicable liability shield from that time onward.

The objective in these procedures is to make sure that no interest is extinguished in the process of any of the transactions under META, whether a merger, conversion, interest exchange or domestication. This is true for an interest holder such as a shareholder in a corporation or holder of a partnership interest. It is also true for creditor interests that pre-existed the given transaction. The point of the procedures is to end with an entity that continues the business of those entities it succeeds without extinguishing obligations incurred by these entities in a seamless, nondisruptive transfer.

There are a few exclusions from META. If mergers in a state are already governed by the merger provisions in a state's enactment of a uniform or model act, META will not apply or displace those provisions. The same is true for interest exchanges when a state has the Model Business Corporation Act. Not all entities will necessarily be governed by META. There are special corporations, for example, that should not be included, depending upon their status in a state. META allows for them to be specifically excluded.

META is a model act, not a uniform act, although several of the acts affected are uniform acts. Although there is some uniformity in entity law, i.e., partnership law, it is not true across the full spectrum of entity law. This means that using META from state to state is likely to mean much adaptation of META provisions. The effect of utilizing META may have the impact of introducing more uniformity of law relating to entities from state to state, but use of its language in a uniform way cannot be expected.

Business organization law and the law relating to not-for-profit organizations has been much refurbished, updated and improved in the 30 years preceding 2004, the year of META. Development has been dynamic and good for economic function in the entire United States. META adds another element to this dynamic progression of law relating to these entities. It is good for business and not-for-profit ventures alike. It should be studied, adapted and enacted in every state as soon as practicable.

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Uniform Law Commission

The National Conference of Commissioners on Uniform State Laws

Contact Us: 312.450.6600

Legislative Fact Sheet - Entity Transactions Act

Act Entity Transactions Act

Origin Completed by the National Conference of Commissioners on Uniform State Laws in 2005.

Description This act will allow conversion of one kind of business organization to another, or the merger of two or more business organizations into one organization.

Endorsements

Enactments District of Columbia, Idaho, Kansas

2011 Introductions Alaska, Connecticut

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ABOUT ULC

The **Uniform Law Commission (ULC)**, also known as National Conference of Commissioners on Uniform State Laws (NCCUSL), now in its 116th year, provides states with non-partisan, well-conceived and well-drafted legislation that brings clarity and stability to critical areas of state statutory law.

ULC members must be lawyers, qualified to practice law. They are practicing lawyers, judges, legislators and legislative staff and law professors, who have been appointed by state governments as well as the District of Columbia, Puerto Rico and the U.S. Virgin Islands to research, draft and promote enactment of uniform state laws in areas of state law where uniformity is desirable and practical.

- ULC strengthens the federal system by providing rules and procedures that are consistent from state to state but that also reflect the diverse experience of the states.
- ULC statutes are representative of state experience, because the organization is made up of representatives from each state, appointed by state government.
- ULC keeps state law up-to-date by addressing important and timely legal issues.
- ULC's efforts reduce the need for individuals and businesses to deal with different laws as they move and do business in different states.
- ULC's work facilitates economic development and provides a legal platform for foreign entities to deal with U.S. citizens and businesses.
- Uniform Law Commissioners donate thousands of hours of their time and legal and drafting expertise every year as a public service, and receive no salary or compensation for their work.
- ULC's deliberative and uniquely open drafting process draws on the expertise of commissioners, but also utilizes input from legal experts, and advisors and observers representing the views of other legal organizations or interests that will be subject to the proposed laws.
- ULC is a state-supported organization that represents true value for the states, providing services that most states could not otherwise afford or duplicate.



**SUGGESTED
STATE
LEGISLATION
2011
Volume 70**

Developed by the
Committee on Suggested State Legislation

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Sharing Capitol Ideas.

The Council of State Governments is the premier multibranch organization forecasting policy trends for the community of states, commonwealths and territories on a national and regional basis.

CSG alerts state elected and appointed officials to emerging social, economic and political trends; offers innovative state policy responses to rapidly changing conditions; and advocates multistate problem-solving to maximize resources and competitiveness.

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Foreword

The Council of State Governments (CSG) is pleased to bring to you the **2011 *Suggested State Legislation*** volume, a valued series of compilations of draft legislation from state statutes on topics of current interest and importance to the states. The draft legislation found in this book represents many hours of work by The Council's Committee on Suggested State Legislation, CSG Policy Task Forces, and CSG staff.

The entries in this book were selected from hundreds of submissions. Most are based on existing state statutes. Neither The Council nor the Committee seeks to influence the enactment of state legislation. Throughout the years, however, both have found that the experiences of one state may prove beneficial to others. It is in this spirit that these proposals are presented.

The Council of State Governments
Lexington, Kentucky

David Adkins
Executive Director


Staff Acknowledgments

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Introduction

“A single state’s experience in a new field frequently leads to the adoption of similar action in other states, if the problem is general, the approach is well conceived, and other states can be made aware of the action.”

That statement is a simple one, but it remains as true today as it did when it first appeared in the introduction to the 28th volume of *Suggested State Legislation*. For more than 60 years, The Council of State Governments’ Suggested State Legislation (SSL) program has informed state policy-makers about a broad range of legislative issues, and its national Committee on Suggested State Legislation has been an archetype of interstate dialogue, one successfully imitated in a variety of ways.

The Committee on Suggested State Legislation originated as a group of state and federal officials who first met in August of 1940 to review state laws relating to U.S. security. The result was *A Legislative Program for Defense*. That group reconvened following the nation’s entry into World War II in order to develop a volume of *Suggested State War Legislation*. That publication was succeeded by *Suggested State Legislation*, an annual volume of draft legislation about topics of major governmental interest. In keeping with CSG’s current mission, the SSL Committee now focuses more on issues arising from major trends impacting the states, such as an aging population. Today, SSL Committee members represent all regions of the country. They are generally legislators and legislative staff, and include the CSG policy task force chairs.

Traditionally, SSL volumes were the culmination of a yearlong process in which legislation was received and reviewed by members of the SSL Committee in a series of meetings. Traditionally, the volumes were produced at the end of the SSL Cycle. More recently, the SSL volumes were released concurrently online at CSG’s STARS database. However, even under this system, in some cases, the items that the committee voted to include in a volume had to be held for as long as 11 months before they could be distributed to the states.

Beginning with the 2003 SSL Cycle, the SSL Committee produces SSL volumes electronically in segments, one segment after every committee meeting. Each segment will be published on-line approximately two months after a meeting. The electronic parts will be combined into a book that CSG will continue to publish at the end of the SSL Cycle, at least for the immediate future.

The SSL Committee considers legislation submitted by state officials and staff, CSG Associates and CSG staff. It will consider legislation from other sources, but only when that legislation is submitted through a state official. Other sources include public interest groups and members of the corporate community who are not CSG Associates.

Throughout the SSL solicitation, review and selection processes, members of the Committee employ a specific set of criteria to determine which items will appear in the volume:

- Is the issue a significant one currently facing state governments?
- Does the issue have national or regional significance?
- Are fresh and innovative approaches available to address the issue?
- Is the issue of sufficient complexity that a bill drafter would benefit from having a comprehensive draft available?
- Does the bill or Act represent a practical approach to the problem?
- Does the bill or Act represent a comprehensive approach to the problem or is it tied to a narrow approach that may have limited relevance for many states?
- Is the structure of the bill or Act logically consistent?
- Are the language of and style of the bill or Act clear and unambiguous?

All items selected for publication in SSL are presented in a general format as shown in

the following *Suggested State Legislation* Style Manual and Sample Act. However, beginning with the 1997 volume, items presented in *Suggested State Legislation* volumes more closely reflect the style and form as they were submitted to the program. Entries from the National Conference of Commissioners on Uniform State Laws are rarely changed from their submitted format.

Revisions in the headings and numbering and other modifications may be necessary in order to conform to local practices, and decisions must be made regarding optional sections and provisions. Thus, readers should note that *Suggested State Legislation* drafts typically do not duplicate actual state legislation.

A “Statement,” in lieu of a draft Act, might appear in a volume when the SSL Committee has reviewed and approved a piece of legislation, but its length and/or complexity preclude its publication in whole or in the standard SSL format. “Notes” also may be used when the Committee is particularly interested in highlighting and summarizing a variety of legislative actions undertaken by the states in a particular area.

State officials and staff, CSG Associates, and CSG staff are encouraged to submit at any time legislation which is likely to be of interest and relevance to other states. In order to facilitate the selection and review process, it is particularly helpful for respondents to provide information on the current status of the legislation, an enumeration of other states with similar provisions, and any summaries or analyses of the legislation that may have been undertaken.

Legislation and accompanying materials should be submitted to the Suggested State Legislation Program, The Council of State Governments, 2760 Research Park Drive, P.O. Box 11910, Lexington, Kentucky 40578-1910, (859) 244-8000, fax (859) 244-8001, or ssl@csg.org.

Readers should keep in mind that neither The Council of State Governments nor the SSL Committee are in the position of advocating the enactment of items that are presented in SSL Volumes. Instead, the entries are offered as an aid to state officials interested in drafting legislation in a specific area, and can be looked upon as a guide to areas of broad current interest in the states.

Interested readers can find out more about the SSL program by visiting the SSL pages at CSG’s Internet Web site at www.csg.org.

SSL Criteria

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 - Is the language and style of the bill or Act clear and unambiguous?

The word “Act” as used herein refers to both proposed and enacted legislation. Attempts are made to ensure that items presented to committee members are the most recent versions. However, interested parties should contact the originating state for the ultimate disposition in the state of any docket entry in question, including substitute bills and amendments. Furthermore, the Committee on Suggested State Legislation does not guarantee that entries presented on its dockets or in a *Suggested State Legislation* volume represent the exact versions of those items as enacted into law, if applicable.

Model Entity Transactions Act

According to the Uniform Law Commissioners (ULC), anyone who establishes and develops a business in America has choices available for the entity that may be chosen to do business. As a business grows, these options also allow for some changes in form and location of the entity chosen. For example, a small enterprise that chooses to be a partnership initially has the opportunity to reorganize as a corporation when the business is big enough to want the advantage of the corporate form. Not-for-profit activities also have a greater array of organizational forms, now including the limited liability company and the limited partnership along with the not-for-profit corporation. American law is particularly flexible and responsive to the needs of both the for-profit and the not-for-profit sectors.

However, until recently, there was no comprehensive statutory framework for changing entity form, whether for merger of entities, conversion of one entity to another, exchanging interests to merge businesses without merging the entities (called an interest exchange), or for changing the location of the entity (called a domestication). The problem with mergers, conversions, interest exchanges and changing the location of entities is that an entity involved may have to be dissolved to accomplish the desired end. This means technically winding down the business, satisfying creditors and interest holders in the winding down, and potentially incurring adverse tax consequences. This is a burden when the objective is not to dissolve the business but to continue it in another form or another location. The hazards of the process are many and very costly. A statute that allows these events to occur without dissolving at least one of the entities involved will increase efficiency and lower costs. A general statute, not limited in scope to less than all of the kinds of entities commonly involved in these transactions, is highly desirable. Cross-entity transactions should be available. That statute should also be one that can be fit with the existing entity law in a state so that it is not necessary to repeal all the existing entity law to accomplish the objective. The ULC/American Bar Association Model Entity Transaction Act (META) is a general statute that is designed to fit with a state's existing entity law to accomplish the objective.

META governs four kinds of transactions: *merger* of one entity with another, *conversion* of an entity to another kind of entity, an *interest exchange* between two entities so that one of them is controlled by the other without actually merging the two entities and the *domestication* of an entity originally organized in one state in another state. A merger occurs when one entity acquires another entity and the result is a single entity composed of both the original entities. A conversion occurs when one kind of entity converts to another kind, i.e., a limited liability company converts into a business corporation. An interest exchange occurs when interest holders transfer their interests in one entity to another for interests in the second entity. For example, the holders of all interests in a limited partnership transfer their interests to a corporation in return for shares of stock in the corporation. A domestication occurs when an entity formed under the laws of one state becomes an entity formed in another state, extinguishing its entity status in the first state. The articles of META essentially provide the procedures to accomplish each of these transactions.

META authorizes each of these kinds of transactions. It authorizes different entities to merge, i.e., a corporation may merge with a limited partnership. It authorizes a partnership to convert to a limited liability company. An interest swap may occur between a limited partnership and a limited liability company. A corporation may change its place of organization from one state to another. These are examples of the kinds of transactions authorized. They can occur between an entity in one state and a foreign entity formed originally in another state, providing that the law of the foreign state permits such a transaction.

In each kind of transaction, there must be a plan that is approved by the interest holders in the entities. The plan generally describes the transaction and its effect in detail. Approval of the plan proceeds according to the organic statute and rules that govern the pre-existing entities, or if none, by unanimous consent of all interest holders. If, for example, a partnership agreement governing a limited partnership provides for consent of partners to one of the kinds of transactions subject to META, the agreement would be the organic rules that would determine the approval of the plan. Otherwise all the partners would have to consent.

Once a plan is approved, a statement relevant to the transaction must be filed in the office in a state in which entity statements or charters are normally filed. The filing puts the transaction and the identity of the entity that survives in public records. That entity becomes the entity with the capacity to do business and it has the applicable liability shield from that time onward.

The objective in these procedures is to make sure that no interest is extinguished in the process of any of the transactions under META, whether a merger, conversion, interest exchange or domestication. This is true for an interest holder such as a shareholder in a corporation or holder of a partnership interest. It is also true for creditor interests that pre-existed the given transaction. The point of the procedures is to end with an entity that continues the business of those entities it succeeds without extinguishing obligations incurred by these entities in a seamless, nondisruptive transfer.

META is a model Act, not a uniform Act. This means states generally will have to adapt some META provisions to their own statutes. To do this, states must first identify all of the existing statutory provisions that allow for same-type (all of the entities involved are the same, e.g., a merger between two corporations) and cross-type (more than one type of entity is involved in the transaction, e.g., a merger between a corporation and a partnership), mergers, interest exchanges, conversions, and domestications for any kind of entity. An entity is defined in Section 102 to include all types of partnerships (general partnerships, limited liability partnerships, limited partnerships, and limited liability limited partnerships), limited liability companies, all types of corporations (including non-profit corporations, close corporations in those states that have separate statutes for close corporations, and professional corporations), business trusts, cooperatives, and unincorporated nonprofit associations (at least in states that have the Uniform Unincorporated Nonprofit Associations Act or have statutes that allow an unincorporated nonprofit organization to hold property in its own name). Many states have statutes governing other types of business organizations. Texas, for example, has special statutory provisions for real estate investment trusts (in most other states, REITs would be considered a type of business trust). These special types of entities should also be included in the review process.

The next step is to analyze the overall existing statutory framework for same-type and cross-type transactions. This analysis will reveal that there are gaps in coverage for many of the types of transactions covered by the act, either directly or by default, even in those states that have adopted Chapter 9 and 11 of the Model Business Corporation Act and the uniform unincorporated organization acts.

Every state will have provisions for mergers of corporations into other corporations but not all states authorize interest exchanges between corporations (the corporate statutes generally refer to these as share exchanges) and only a few states specifically authorize corporations to enter into merger or interest exchange transactions with other types of organizations. Moreover, very few existing corporate statutes have provisions for conversions of corporations into other types of entities or authorize corporations to domesticate in another state.

The same-type and cross-type landscape with respect to unincorporated entities is even less complete. The Uniform Partnership Act (1997) (RUPA), which has been adopted in approximately 2/3 of the states (and in the District of Columbia, Puerto Rico and the Virgin

Islands) only authorizes mergers and conversions of general partnerships and limited partnerships. It does not allow conversions into any other type of entity or mergers with any other type of entity; nor does it authorize interest exchange or domestication transactions. Several states that have adopted RUPA have provisions allowing same-type and cross-type conversions and mergers of general partnerships with not only limited partnerships but also with corporations and limited liability companies; and a few RUPA states have expanded the list to include any business entity (it is unclear in many of these states, however, whether these statutes apply to non-profit entities). With the exception of Ohio, which authorizes mergers and consolidations of general partnerships with other partnerships and “other domestic or foreign entities,” there are apparently no same-type or cross-type provisions in the general partnership statutes of the approximately one-third of the states that still have the 1914 Uniform Partnership Act.

The statutory framework for limited partnership same-type and cross-type transactions is also quite varied. Most states have the Uniform Limited Partnership Act (1976 with 1985 Amendments). That act has no provisions dealing with merger, interest exchange, conversion, or domestication transactions. According to Volume 6A of Uniform Laws Annotated (Supp. 2004), 19 states have adopted provisions authorizing limited partnerships to merge with or convert into some other types of entities. Arizona, for example, only authorizes limited partnerships to convert into general partnerships, but also authorizes limited partnerships to merge with any other type of business entity. Some states allow conversions of limited partnerships into limited liability companies and a few states expand the conversion list to include corporations; most also allow mergers of limited partnerships into other limited partnerships and some other types of entities. Several states appear to exclude non-profit organizations, business trusts, and cooperatives from their cross-form list.

As of October 2007, the Uniform Limited Partnership Act (2001) had been adopted in 16 states. It authorizes a conversion of a limited partnership into any other type of organization, conversion of any other organization into a limited partnership, a merger of a limited partnership with any other type of organization and a domestication (which is a type of conversion under ULPA (2001)). It does not, however, have any specific provisions for interest exchanges.

Most limited liability company statutes have provisions authorizing mergers and conversions, although the scope of coverage is quite varied. The Uniform Limited Liability Company Act (1997) (ULLCA), which has been adopted in eight states and the Virgin Islands, authorizes the conversion of a limited liability company into a general or limited partnership (but not into a corporation or any other type of entity) and a merger of a limited liability company with other limited liability companies or any “other domestic or foreign entities.” ULLCA does not, however, have any provisions authorizing limited liability companies to enter into interest exchange or domestication transactions. In the other 42 states there are substantial differences from the ULLCA scheme with respect to same-type and cross-type transactions. The recently-adopted revised Uniform Limited Liability Company Act (2006) authorizes cross-type mergers, conversions, and domestications, but does not provide for interest exchanges; and the Uniform Limited Cooperative Association Act (2007) authorizes cross-type mergers and conversions.

There are no same-type or cross-type provisions in the Uniform Unincorporated Nonprofit Associations Act. Moreover, there are very few same-type or cross-type provisions in statutes governing all the other types of entities that exist under state law. There are some exceptions, however, such as the Delaware Statutory Trust Act which allows mergers and conversions of business trusts into other entities, and the Minnesota cooperative statute which allows farm cooperatives to convert into limited liability companies.

Once the analysis of the existing same-type and cross-type statutes has been made, decisions need to be made as to which ones should be amended or repealed and whether to add

additional provisions to these statutes. Under META, if the statute governing an entity has same-type provisions, those provisions govern the transaction in question. META provides default rules, however, if the other applicable entity statute has no same-type provisions for the transaction in question. META also applies to cross-type transactions (but defaults to applicable state entity law for approval requirements and the like).

In deciding how to amend, repeal or add to the existing entity statutes, states should avoid any potential inconsistency between META's provisions and similar provisions in the state's entity statutes and make the interplay between META and the state's various entity laws relatively easy to navigate. There are several ways to achieve these goals. First, states can limit existing laws to same-type transactions. One method, which it is anticipated will be the method chosen by most states, is as follows:

With respect to the state's corporation statutes:

(i) Repeal any cross-type provisions from the state's corporation merger statutes. The amendments necessary for this purpose in a state that has adopted the Model Business Corporation Act and the Model Nonprofit Corporation Act are found in Sections A2-1 and A2-2, respectively. In states whose corporate codes do not have any cross-type merger provisions no amendments to the state's corporate merger provisions will be necessary. Most state also may not have interest exchange provisions in their corporate codes. If that is the case, same-type provisions for interest exchanges do not need to be added to the corporate codes because under META the requirements for approval of a merger and other rights that a shareholder would have in a merger, for example, dissenters' rights, apply. See Sections 203(a) (mergers) and 303(a) (interest exchange).

(ii) Repeal any conversion provisions in the state's corporation statutes. Article 3 of META will, therefore, govern all conversions.

(iii) Retain any existing domestication provisions in the state's organic laws. As is pointed out in the Legislative Note to META Section 501, these entity specific domestication provisions will be listed in Section 501(e) with the result being that Article 5 of META will apply to those types of entities whose organic laws do not already have domestication provisions.

With respect to the state's other entity statutes:

(i) Amend all the merger, interest exchange, and conversion provisions in the state's other entity statutes by stripping out all of the cross-type provisions in the merger provisions, and by repealing any interest exchange or conversion provisions. Any existing domestication provisions would be retained and an appropriate reference to those provisions would be included in Section 501(e). The appropriate amendments for states that have adopted the Uniform Partnership Act (1997), the Uniform Limited Partnership Act (2001), the Uniform Limited Liability Company Act (1996) or the ABA Prototype Limited Liability Company Act are found in Sections A2-3, A2-4, A2-5, and A2-6, respectively.

(ii) The existing requirements for approval of mergers, interest exchanges, conversions, domestications, and amendment of the organic rules in the state's existing organic laws for unincorporated entities need to be carefully reviewed. If they require unanimity (or they are silent on what vote is required), then the suggested amendments in this appendix will make all the voting requirements for both same-type and cross-type transactions involving unincorporated entities consistent. The situation is more complicated, however, if there is not complete consistency among those organic laws; for example, as is sometimes the case, if the state's partnership statutes require unanimity but its LLC statute requires only a majority vote for some or all transactions. If there is not complete consistency, decisions will need to be made whether to retain the differences or to make all of the voting requirements either unanimous or majority. Other issues that will need to be resolved are what the appropriate vote should be for transactions other than mergers (i.e., interest exchanges, conversions, and domestications) where

there are no existing voting provisions other than for mergers; what is the appropriate voting requirement for a transaction under META where an unincorporated entity organic law does not have any same-type or cross-type provisions for that type of transaction; and how the voting requirements under META relate to the vote required to amend an unincorporated entity's organic rules. Once this analysis is completed, it will be possible to construct the appropriate amendments to the state's existing unincorporated entity organic laws.

Another method of integrating META with a state's organic laws is to delete from the existing organic laws any provisions that deal with cross-type transactions and add same-type merger and interest exchange, and domestication provisions to every organic law that does not currently have these provisions. Thus all same-type entity transactions would be governed by the state's organic laws and all cross-type transactions would be governed by META. This approach will require a large number of changes to existing organic laws in most states because same-type merger and interest exchange, and domestication provisions would have to be added to many of the state's organic laws, including its unincorporated nonprofit, cooperative, and business trust statutes. Article 5 of META would also not be enacted because the organic laws for each type of entity would have domestication provisions.

States can also repeal all the existing same-type and cross-type transaction provisions in all of the organic laws and add to META all the corporate merger approval and related statutory provisions such as appraisal rights, as well as substantially modifying Sections 203, 303, 403, and 503 so that there will be one set of approval provisions for a corporation engaging in a META transaction and a second set of approval provisions for unincorporated entities engaging in a META transaction. Making all of these modifications will be a monumental task.

Finally, integrating META with a state's existing organic laws could be achieved by repealing any provisions for cross-type transactions from the corporation laws (see Sections A2-1 and A2-2 for the appropriate amendments in a state that has enacted the Model Business Corporation Act and the Model Nonprofit Corporation Act) and, in addition by repealing all of the provisions for same-type and cross-type transactions in all of the state's unincorporated entity organic laws. This approach, which is a variant of avoids the problem of incorporating the corporation law voting requirements and related provisions such as appraisal rights. It will work best, however, in a state where all of the existing unincorporated entity organic laws require unanimity for approval of a merger or similar transaction (and where unanimity is also required to amend each type of entity's organic rules), since that is the ultimate default rule in META. This approach will be quite cumbersome if the state's unincorporated entity organic laws require less than unanimous consent for some types of entities, because the less than unanimous approval requirements would have to be incorporated into META.

The ULC suggests states place a reference to META in the state's entity statutes specifying the transactions that are governed by META. As an alternative to the statutory references proposed in this appendix, legislative notes could be used in those states that follow that practice. A note would be placed in the corporate statutes at the end of the merger and share exchange provisions stating that META is the primary statute that applies to reorganization transactions involving a corporation and another form of entity. For other entities whose organic laws have merger provisions, the legislative notes would appear at the end of those provisions stating META is the primary statute for any cross-type merger involving that type of entity and also is the primary statute governing both same-type and cross-type interest exchange and domestication transactions where that type of entity is a party. Finally, if there are no merger provisions for a particular type of entity, a legislative note should be placed at the end of the governing statute stating that META is the statute that governs merger, interest exchange, conversion and domestication transactions where that type of entity is involved.

Interested readers can see how one state adopted META by viewing amendments Kansas

made to its law when it adopted META as SB 132 in 2009. However, the text in this *SSL* volume is the model ULC language, includes legislative notes about the act, and excludes line numbers. Readers can access official commentary about the act and detailed suggestions about how to implement the Act vis-à-vis existing business entity laws at this Web address: http://www.law.upenn.edu/bll/archives/ulc/ueta/2007_final.htm or at www.nccusl.org.

Submitted as:

Kansas

SB 132

Status: Enacted into law in 2009.

Comment:

Notes about ULC Acts:

For information on the specific drafting rules used by the ULC, the *ULC Procedural and Drafting Manual* is available online at www.nccusl.org.

In general, the use of bracketed language in ULC acts indicates that a choice must be made between alternate bracketed language, or that specific language must be inserted into the empty brackets. For example: “An athlete agent who violates Section 14 is guilty of a [misdemeanor] [felony] and, upon conviction, is punishable by [].

A word, number, or phrase, or even an entire section, may be placed in brackets to indicate that the bracketed language is suggested but may be changed to conform to state usage or requirements, or to indicate that the entire section is optional. For example: “An applicant for registration shall submit an application for registration to the [Secretary of State] in a form prescribed by the [Secretary of State]. [An application filed under this section is a public record.] The application must be in the name of an individual, and, except as otherwise provided in subsection (b), signed or otherwise authenticated by the applicant under penalty of perjury.”

The sponsor may need to be consulted when dealing with bracketed language.

Questions about META?

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~~Suggested State Legislation~~

~~(Title, enacting clause, etc.)~~

~~MODEL ENTITY TRANSACTIONS ACT (Last Revised or Amended in 2007)~~

~~[ARTICLE] 1 GENERAL PROVISIONS~~

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

~~SECTION 102. DEFINITIONS. In this [act]:~~

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MEMORANDUM

March 24, 2011

SUBJECT: Sectional summary of SB 101 relating to the Alaska Entity Transactions Act (Work Order No. 27-LS0437\A)

TO: Senator Joe Paskvan
Attn: Jeff Stepp

FROM:  Theresa Bannister
Legislative Counsel

You have requested a sectional summary of the above-described bill. As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. In this sectional summary, "new chapter" or "chapter" means the Alaska Entity Transactions Act to be numbered AS 10.55, and "department" means the Department of Commerce, Community, and Economic Development. Please be aware that many terms in the new chapter are defined at the end of the new chapter.

Section 1. Conforming change (AS 10.26.670 repealed).

Section 2. Adds two sections to the article on organic change in AS 10.06, the for-profit corporations chapter. Sec. 10.06.595 allows, with exceptions, corporations to enter into mergers, interest exchanges, conversions, or domestications under the new chapter (the Alaska Entity Transactions Act). States that specific provisions do not apply to certain transactions covered by the new chapter. Sec. 10.06.600 defines terms for the article to conform to the application of the new chapter.

Section 3. Conforming and editorial change (AS 10.15.450 repealed).

Section 4. Adds AS 10.20.285 as a new section in the nonprofit corporations chapter to state that a corporation may, under the new chapter, enter into mergers, interest exchanges, conversions, and domestications that are not covered by certain sections of the nonprofit corporations chapter.

Section 5. Adds AS 10.30.058 as a new section in the chapter on cemetery organizations to state that cemetery associations and nonprofit cemetery corporations may enter into mergers, interest exchanges, conversions, and domestications under the new chapter.

Section 6. Adds a new section to the chapter on religious corporations (AS 10.40) to state that a corporation formed under AS 10.40 may enter into mergers, interest exchanges, conversions, and domestications under the new chapter.

Section 7. Amends AS 10.45.240, a section of the professional corporations chapter, to state that the provision in the state's for-profit corporations code relating to entering into mergers, interest exchanges, conversions, and domestications under the new chapter applies to professional corporations.

Section 8. Adds a new section to the limited liability company chapter to state that a limited liability company may, under the new chapter, enter into mergers, interest exchanges, conversions, and domestications that are not covered by certain sections of the limited liability company chapter.

Section 9. Conforming change (AS 10.50.570 has been repealed).

Section 10. Adds definitions to AS 10.50, the chapter on limited liability companies, conforming to the application of the new chapter.

Section 11. Adds the new chapter containing the Alaska Entity Transactions Act.

Sec. 10.55.103. Indicates how the new chapter relates to other laws, including principles of law and equity.

Sec. 10.55.104. Requires entities to satisfy certain governmental notice or approval requirements for mergers when involved in an interest exchange, conversion, or domestication. Addresses the diversion of property held for charitable purposes.

Sec. 10.55.105. Includes a filing under the chapter in an entity's public record.

Sec. 10.55.106. Provides that achieving a result under the new chapter does not prevent achieving the same result under another law.

Sec. 10.55.107. Allows a transaction plan (under certain conditions) to refer to facts that can be found outside the plan, even if the facts are not within the control of a party to the transaction.

Sec. 10.55.108. States that approval of a transaction by the unanimous vote or consent of an entity's interest holders satisfies the chapter's transaction approval requirements, unless, for a domestic entity, the organic law or organic rules state otherwise.

Sec. 10.55.109. Addresses when dissenters' rights are available to an interest holder. As a default provision, states that the interest holder may use the procedures under AS 10.06.576.

Sec. 10.55.110. Lists the entities that may not take part in a transaction under the chapter. Includes, among others, financial institutions and insurers.

Sec. 10.55.120. Requires that the name that a domestic entity takes under this chapter comply with certain requirements.

Sec. 10.55.201. Provides the general authorization for mergers. Lists certain excluded transactions.

Sec. 10.55.202. States that a domestic entity may become a party to a merger by approving a plan of merger. States what the plan must contain and allows it to contain any other provision not prohibited by law.

Sec. 10.55.203. States that a plan of merger is not effective unless it has been approved. Describes what approval is required.

Sec. 10.55.204. Describes how a plan merger for a domestic merging entity may be amended. Allows the plan to be abandoned and states how this may be done, depending on whether the statement of merger has become effective or been filed.

Sec. 10.55.205. Requires a statement of merger to be signed and filed with the department. Identifies what the statement of merger must contain and allows it to contain any other provision not prohibited by law. Requires, if a domestic entity is the surviving entity, that the surviving entity's public organic document satisfy this state's requirements, with certain exceptions. Allows a signed plan of merger with the required contents to be filed with the department instead of a statement of merger and to have the same effect as a statement of merger. States when the statement of merger becomes effective.

Sec. 10.55.206. Lists the effects of a merger on the entities involved. States, with exceptions, that a merger does not give the rights that an interest holder, governor, or third party would otherwise have when there is a dissolution, liquidation, or winding up. Addresses interest holder liability when a merger becomes effective. For foreign entities that are the surviving entities, allows for service of process on the entity regarding liabilities and provides for appointment of the department as the entity's agent for the service of process. When a merger becomes effective, cancels the foreign qualification of a foreign merging entity that is not the surviving entity.

Sec. 10.55.301. Provides the general authorization for a domestic or foreign entity to acquire the interests of other entities or for its interests to be acquired by other entities. Conditions the foreign entity's authorization on the authorization of the foreign entity's jurisdiction or organization. Provides a special interest exchange rule for certain protected agreements that have domestic entity merger provisions but no interest exchange provisions. Excludes certain share exchanges under AS 10.06 (the for-profit corporations code).

Sec. 10.55.302. States that a domestic entity may be an acquired entity in an interest exchange by approving an interest exchange plan. States what the plan must contain and allows it to contain any other provision not prohibited by law.

Sec. 10.55.303. States that a plan of interest exchange is not effective unless it has been approved. Describes what approval is required.

Sec. 10.55.304. Describes how an interest exchange plan for a domestic acquired entity may be amended. Allows the plan to be abandoned and states how this may be done, depending on whether the statement of interest exchange has become effective or been filed.

Sec. 10.55.305. Requires a statement of interest exchange to be signed and filed with the department. Identifies what the statement of interest exchange must contain and allows it to contain any other provision not prohibited by law. Allows, for a domestic acquired entity, a signed plan of interest exchange with the required contents to be filed with the department instead of a statement of interest exchange and to have the same effect as a statement of interest exchange. States when the statement of interest exchange becomes effective.

Sec. 10.55.306. Lists the effects of an interest exchange on the entities involved. States, with exceptions, that an interest exchange does not give the rights that an interest holder, governor, or third party would otherwise have when there is a dissolution, liquidation, or winding up. Addresses interest holder liability.

Sec. 10.55.401. Provides the general authorization for conversion of domestic and foreign entities. Conditions the conversion authorization of foreign entities to the law of the foreign jurisdiction. Provides a special rule for certain protected agreements that have domestic entity merger provisions but no conversion provisions.

Sec. 10.55.402. States that a domestic entity may convert to a different type of entity by approving a plan of conversion. States what the plan must contain and allows it to contain any other provision not prohibited by law.

Sec. 10.55.403. States that a plan of conversion is not effective unless it has been approved. Describes what approval is required.

Sec. 10.55.404. Describes how a plan of conversion may be amended. Allows the plan to be abandoned and states how this may be done, depending on whether the statement of conversion has become effective or been filed. Indicates what the statement of abandonment must contain when done after a statement of conversion is filed but the filing is not yet effective.

Sec. 10.55.405. Requires a statement of conversion to be signed and filed with the department. Identifies what the statement of conversion must contain and allows it to contain any other provision not prohibited by law. Requires, if the converted entity is a domestic entity, the entity's public organic document to satisfy this state's requirements, with certain exceptions. Allows, for a domestic converting entity, a signed plan of conversion with the required contents to be filed with the department instead of a statement of conversion and to have the same effect as a statement of conversion. States when a statement of conversion becomes effective.

Sec. 10.55.406. Lists the effects of a conversion on the entities involved. States, with exceptions, that a conversion does not give the rights that an interest holder, governor, or third party would otherwise have when there is a dissolution, liquidation, or winding up. Addresses interest holder liability. Provides that a foreign entity that is the converted entity may be served with process in this state regarding liabilities and appoints the commissioner as the agent to receive the process. Provides that the foreign qualification of a converting entity that is a qualified foreign entity is cancelled when the conversion becomes effective. Provides that a conversion does not require an entity to wind up its affairs and does not constitute or cause a dissolution of the entity.

Sec. 10.55.501. Provides the general authorization for a domestic entity to become a foreign entity of the same type, if the law of the foreign jurisdiction authorizes the domestication. Provides the general authorization for a foreign entity to become a domestic entity of the same type in this state, if the law of the foreign jurisdiction authorizes the domestication. Provides a special rule for certain protected agreements that have merger provisions relating to domestic entities but no domestication provisions.

Sec. 10.55.502. States that a domestic entity may become a foreign entity in a domestication by approving a plan of domestication. States what the plan must contain and allows it to contain any other provision not prohibited by law.

Sec. 10.55.503. States that a plan of domestication is not effective unless it has been approved. Describes what approval is required.

Sec. 10.55.504. Describes how a plan of domestication of a domestic entity may be amended. Allows the plan to be abandoned and states how this may be done, depending on whether the statement of conversion has become effective or been filed. Indicates what the statement of abandonment must contain after the statement of conversion has been filed.

Sec. 10.55.505. Requires a statement of domestication to be signed and filed with the department. Identifies what the statement of domestication must contain and allows it to contain any other provision not prohibited by law. Requires, if the domesticated entity is a domestic entity, the entity's public organic document to satisfy this state's requirements, with certain exceptions. Allows, for a domestic domesticating entity, a signed plan of domestication with the required contents to be filed with the department instead of a statement of domestication and to have the same effect as a statement of domestication. States when a statement of domestication becomes effective.

Sec. 10.55.506. Lists the effects of a domestication for the entities involved. States, with exceptions, that a domestication does not give the rights that an interest holder, governor, or third party would otherwise have when there is a dissolution, liquidation, or winding up. Addresses interest holder liability. Provides that a foreign entity that is the domesticated entity may be served with process in this state regarding liabilities and appoints the commissioner as the agent to receive process. Provides that the foreign qualification of a domesticating entity that is a qualified foreign entity is cancelled upon

domestication. Provides that a domestication does not require an entity to wind up its affairs and does not constitute or cause a dissolution.

Sec. 10.55.601. States the requirements for a document to meet in order to be entitled to be filed by the department under this chapter. Requires payment, or arrangement for payment, of the filing fee and any other required tax, license fee, or penalty.

Sec. 10.55.602. Allows the department to establish and furnish non-mandatory forms for the documents filed under this chapter.

Sec. 10.55.603. Directs the department to collect fees for being served with process, for copying documents, for certifying documents, and for filing documents under this chapter. Directs the department to establish the amount of the fees by regulation.

Sec. 10.55.604. Establishes when a document accepted for filing becomes effective.

Sec. 10.55.605. Allows an entity to correct a filed document under certain circumstances. Indicates how to make the correction. States when the correction is effective.

Sec. 10.55.606. Directs the department to file eligible documents. Indicates how the department is to file a document. Addresses the situation when the department refuses to file a document. Describes the department filing duty as ministerial and as not affecting the validity of the document or the correctness of the information in the document, and as not creating a presumption of validity, invalidity, or information correctness or incorrectness.

Sec. 10.55.607. Allows an appeal if the department refuses to file a document. Allows the court's decision to be appealed as in other civil proceedings.

Sec. 10.55.608. Provides that a department certificate (delivered with a copy of the filed document) conclusively establishes that the original is on file.

Sec. 10.55.609. Establishes a criminal penalty for signing a document knowing it is false for delivery to the department.

Sec. 10.55.610. Allows the department to submit interrogatories (formal questions) to an entity that is a party to a transaction to determine if the entity has complied with the chapter. Indicates when the answers are due and establishes certain criteria for the answers, including who is to answer the questions. Allows a court petition to be filed about the due date, modification, or setting aside of the questions.

Sec. 10.55.615. Establishes that the questions requested by the department and the answers are confidential. Establishes when the department may disclose information from them.

Sec. 10.55.620. Establishes a criminal penalty for failing to answer interrogatories from the department. Allows the department to delay or base its filing of a document on receiving proper answers and on the information in the answers.

Sec. 10.55.625. Gives the department the necessary power to implement the chapter.

Sec. 10.55.701. Requires that, when applying and construing this chapter, consideration must be given to promoting consistency among enacting states.

Sec. 10.55.702. Indicates how the chapter relates to the Electronic Signatures in Global and National Commerce Act.

Sec. 10.55.901. Defines terms for the new chapter.

Sec. 10.55.902. Gives the new chapter a short title: Alaska Entity Transactions Act.

Section 12. Amends a section in the partnership chapter to create an exception for the new chapter relating to the consent required to become a partner.

Section 13. Amends a section in the partnership chapter to create an exception for the new chapter that relates to a partner's transferable interest. States that a partner's interest is personal property, whether or not transferable.

Section 14. Conforming change (AS 32.06.902, 32.06.903, and 32.06.904 are repealed).

Section 15. Conforming change (AS 32.06.902, 32.06.903, and 32.06.904 are repealed).

Section 16. Amends the partnership chapter to remove the ability of a partnership to merge with a limited partnership under that chapter.

Section 17. Amends the partnership chapter to conform merger plans to the change in bill section 16.

Section 18. Amends the partnership chapter to conform the merger approval requirements to the change in bill section 16.

Section 19. Amends the partnership chapter to provide that a merger between a partnership and another form of entity is covered by the new chapter.

Section 20. Amends the partnership chapter to conform the provisions about the effect of a merger to the change in bill section 16.

Section 21. Amends the partnership chapter to conform the statement of merger to the change in bill section 16.

Section 22. Conforming change (AS 32.06.902, 32.06.903, and 32.06.904 are repealed). Deletes reference to AS 32.06.908. States that partnerships or limited partnerships may

enter into mergers, interest exchanges, conversions, and domestications under the new chapter or in any other manner provided by law.

Section 23. Adds a definition of "domestic limited liability partnership."

Section 24. Adds definitions to the partnership chapter.

Section 25. Adds a provision allowing for amending a limited partnership certificate by filing a plan of merger, interest exchange, conversion, or domestication under the new chapter.

Section 26. Amends the limited partnership chapter to state that a partner's interest is personal property, whether or not the interest is transferable.

Section 27. Amends the limited partnership chapter to require that a limited partnership keep at its office a copy of any statement of merger, interest exchange, conversion, or domestication filed under the new chapter.

Section 28. Amends the limited partnership chapter to remove conversions from the application of the partnership chapter (AS 32.06) and to make the application of AS 32.06 to cases not covered by the limited partnership chapter subject to the new chapter.

Section 29. Amends the limited partnership chapter to change the definition of "limited partnership" to exclude certain entities and to limit the term to entities under the chapter.

Section 30. Repeals certain statutes.

Section 31. Describes how certain changes in the bill make indirect court rule amendments.

Section 32. Allows the department to get started on regulations for the Act.

Section 33. Provides a saving clause for actions and proceedings that are begun, or rights that have accrued, before the bill's effective date.

Section 34. Makes bill section 32 go into effect immediately.

Section 35. Gives the bill, except as provided in sec. 34, an effective date of July 1, 2013.

If I may be of further assistance, please advise.



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Transmitted via email

March 26, 2010

Senator Joe Paskvan
AK State Capitol, Room #7
Juneau, AK 99801
Sen.Joe.Paskvan@legis.state.ak.us

Dear Senator Paskvan:

I am writing in support of Senate Bill 304. Senate Bill 304 will create a statutory framework to facilitate corporate transactions between different types of legal entities. Under current law, transactions which involve a merger, sale or transfer of certain assets where a limited liability company is a party to the transaction require additional steps, cost and complexity. The current problems with transactions between limited liability companies and certain other limited liability entities are not based on sound policy; they are simply a result of the accumulation of unresolved issues. Adoption by Alaska of the Model Entity Transaction Act will remove unnecessary steps to such transactions.

As Doyon has grown, its corporate structure has grown more complex. The passage of Senate Bill 304 will help to take some of the unnecessary complexity out of transactions, and will avoid the need to incorporate in other jurisdictions where the laws are better defined for complex transactions.

Respectfully submitted,

Norman L. Phillips, Jr.
President and CEO

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www.doyon.com