

HB

57

<TARGET><BILL>HB 57</BILL><SUBJECT>HB
57</SUBJECT><COMM>HJUD28</COMM></TARGET>

AMENDMENT #1

passed unanimously

Gruenberg

OFFERED IN THE HOUSE

BY REPRESENTATIVE HOLMES

TO: CSHB 57(), Draft Version "O"

1 Page 1, line 7, through page 2, line 1:

2 Delete all material.

3

4 Page 2, line 2:

5 Delete "Sec. 2"

6 Insert "Section 1"

7

8 Renumber the following bill sections accordingly.

9

10 Page 49, line 16:

11 Delete "AS 06.26.670;"

12

13 Page 49, line 20:

14 Delete "sec. 11"

15 Insert "sec. 10"

16

17 Page 49, line 24:

18 Delete "sec. 11"

19 Insert "sec. 10"

20

21 Page 49, line 27:

22 Delete "sec. 11"

23 Insert "sec. 10"

1

2 Page 49, line 31:

3 Delete "sec. 11"

4 Insert "sec. 10"

5

6 Page 50, line 13:

7 Delete "Section 32"

8 Insert "Section 31"

9

10 Page 50, line 14:

11 Delete "sec. 34"

12 Insert "sec. 33"

CS FOR HOUSE BILL NO. 57()

**IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-EIGHTH LEGISLATURE - FIRST SESSION**

BY

**Offered:
Referred:**

Sponsor(s): REPRESENTATIVES HOLMES AND OLSON, Hawker, Peggy Wilson

A BILL

FOR AN ACT ENTITLED

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

6 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

7 *** Section 1.** AS 06.26.650(a) is amended to read:

8 (a) A national bank whose main office is located in the state or a state bank
9 whose main office is located in the state may convert to a trust company or merge or
10 consolidate with a trust company, and a trust company may merge or consolidate with
11 another trust company, if the conversion, merger, or consolidation is consistent with
12 federal and state law and approved by the department. The requirements of this
13 section and AS 06.26.660 [AS 06.26.650 - 06.26.670] are in addition to the merger

1 and consolidation requirements of AS 10.06.

2 * **Sec. 2.** AS 10.06 is amended by adding new sections to article 8 to read:

3 **Sec. 10.06.595. Application of provisions.** Except as provided by
4 AS 10.55.201(c)(1)(A) and 10.55.301(d), a corporation may enter into a merger,
5 interest exchange, conversion, or domestication under AS 10.55. AS 10.06.566 and
6 10.06.568 do not apply to mergers, interest exchanges, conversions, and
7 domestications that are covered by AS 10.55.

8 **Sec. 10.06.600. Definitions.** In AS 10.06.530 - 10.06.590,

9 (1) "consolidation" means a consolidation authorized by AS 10.06.534
10 or 10.06.562;

11 (2) "merger" means a merger authorized by AS 10.06.530 or
12 10.06.562;

13 (3) "share exchange" means a share exchange authorized by
14 AS 10.06.538 or an exchange of shares covered by AS 10.06.562.

15 * **Sec. 3.** AS 10.15.455 is amended to read:

16 **Sec. 10.15.455. Definitions.** In AS 10.15.400 - 10.15.455 [AS 10.15.400 -
17 10.15.450],

18 (1) "new cooperative" means the new cooperative provided for in the
19 plan of consolidation;

20 (2) "surviving cooperative" means the cooperative designated in the
21 plan of merger as the surviving cooperative.

22 * **Sec. 4.** AS 10.20 is amended by adding a new section to article 4 to read:

23 **Sec. 10.20.285. Other transactions.** Under AS 10.55 (Alaska Entity
24 Transactions Act), a corporation may enter into mergers, interest exchanges,
25 conversions, and domestications that are not covered by AS 10.20.216 - 10.20.280.

26 * **Sec. 5.** AS 10.30 is amended by adding a new section to read:

27 **Sec. 10.30.058. Other transactions.** A cemetery association and a nonprofit
28 cemetery corporation may enter into mergers, interest exchanges, conversions, and
29 domestications under AS 10.55 (Alaska Entity Transactions Act).

30 * **Sec. 6.** AS 10.40 is amended by adding a new section to read:

31 **Sec. 10.40.125. Other transactions.** A corporation formed under this chapter

1 may enter into mergers, interest exchanges, conversions, and domestications under
2 AS 10.55 (Alaska Entity Transactions Act).

3 * **Sec. 7.** AS 10.45.240 is amended to read:

4 **Sec. 10.45.240. Applicability of Alaska Corporations Code and Alaska**
5 **Entity Transactions Act.** The Alaska Corporations Code, **including the provision in**
6 **AS 10.06.595 that allows, with exceptions, corporations to enter into mergers,**
7 **interest exchanges, conversions, and domestications under AS 10.55 (Alaska**
8 **Entity Transactions Act),** is applicable to professional corporations, and they enjoy
9 the powers and privileges and are subject to the duties, restrictions, and liabilities of
10 other corporations, except when inconsistent with this chapter. This chapter takes
11 precedence in the event of a conflict with provisions of the Alaska Corporations Code
12 or other laws.

13 * **Sec. 8.** AS 10.50 is amended by adding a new section to read:

14 **Sec. 10.50.580. Other transactions.** Under AS 10.55 (Alaska Entity
15 Transactions Act), a limited liability company may enter into mergers, interest
16 exchanges, conversions, and domestications that are not covered by AS 10.50.500 -
17 10.50.565.

18 * **Sec. 9.** AS 10.50.990(1) is amended to read:

19 (1) "articles of organization" means the articles of organization filed
20 under AS 10.50.070 [OR 10.50.570] and the articles as amended or restated;

21 * **Sec. 10.** AS 10.50.990 is amended by adding new paragraphs to read:

22 (19) "consolidation" means a consolidation authorized by
23 AS 10.50.500;

24 (20) "merger" means a merger authorized by AS 10.50.500.

25 * **Sec. 11.** AS 10 is amended by adding a new chapter to read:

26 **Chapter 55. Alaska Entity Transactions Act.**

27 **Article 1. General Provisions.**

28 **Sec. 10.55.103. Relationship of this chapter to other laws.** (a) Unless
29 displaced by particular provisions of this chapter, the principles of law and equity
30 supplement this chapter.

31 (b) Except as expressly provided in this chapter, this chapter does not

1 authorize an act prohibited by, and does not affect the application or requirements of,
2 law other than this chapter.

3 (c) A transaction accomplished under this chapter may not create or impair
4 any right or obligation of a person under a provision of the law of this state other than
5 this chapter relating to a change in control, takeover, business combination, control-
6 share acquisition, or similar transaction involving a domestic merging, acquired,
7 converting, or domesticating corporation unless,

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

10 (2) if the corporation survives the transaction, the approval of the plan
11 is by a vote of the shareholders or directors that would be sufficient to create or impair
12 the right or obligation directly under the provision.

13 **Sec. 10.55.104. Required notice or approval.** (a) A domestic or foreign entity
14 that is required to give notice to, or obtain the approval of, a governmental agency or
15 officer in order to be a party to a merger shall give the notice or obtain the approval in
16 order to be a party to an interest exchange, conversion, or domestication.

17 (b) Property held for a charitable purpose under the law of this state by a
18 domestic or foreign entity immediately before a transaction under this chapter
19 becomes effective may not, as a result of the transaction, be diverted from the objects
20 for which it was donated, granted, or devised unless, to the extent required by or under
21 the law of this state concerning the nondiversion of charitable assets, the entity obtains
22 an appropriate order of the superior court specifying the disposition of the property.

23 **Sec. 10.55.105. Status of filings.** A filing under this chapter becomes part of
24 the public organic document of the entity.

25 **Sec. 10.55.106. Nonexclusivity.** The fact that a transaction under this chapter
26 produces a certain result does not preclude the same result from being accomplished in
27 any other manner permitted by law other than this chapter.

28 **Sec. 10.55.107. Reference to external facts.** A plan may refer to facts
29 ascertainable outside of the plan if the manner in which the facts will operate on the
30 plan is specified in the plan. The facts may include the occurrence of an event or a
31 determination or action by a person, whether or not the event, determination, or action

1 is within the control of a party to the transaction.

2 **Sec. 10.55.108. Alternative means of approval of transactions.** Except as
3 otherwise provided in the organic law or organic rules of a domestic entity, approval
4 of a transaction under this chapter by the unanimous vote or consent of its interest
5 holders satisfies the requirements of this chapter for approval of the transaction.

6 **Sec. 10.55.109. Dissenters' rights.** (a) An interest holder of a domestic
7 merging, acquired, converting, or domesticating entity is entitled to dissenters' rights
8 in connection with the transaction if the interest holder would have been entitled to
9 dissenters' rights under the entity's organic law in connection with a merger in which
10 the interest of the interest holder was changed, converted, or exchanged unless

11 (1) the organic law permits the organic rules to limit the availability of
12 dissenters' rights; and

13 (2) the organic rules provide the limit described in (1) of this
14 subsection.

15 (b) An interest holder of a domestic merging, acquired, converting, or
16 domesticating entity is entitled to contractual dissenters' rights in connection with a
17 transaction under this chapter to the extent provided

18 (1) in the entity's organic rules;

19 (2) in the plan; or

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

21 (c) If an interest holder is entitled to contractual dissenters' rights under (b) of
22 this section and the entity's organic law does not provide procedures for the conduct of
23 a dissenters' rights proceeding, the interest holder is entitled to use the procedures
24 established under AS 10.06.576 as if the interest holder were a dissenting shareholder
25 of a corporation under AS 10.06.

26 **Sec. 10.55.110. Excluded entities and transactions.** The following entities
27 may not participate in a transaction under this chapter:

28 (1) a financial institution; in this paragraph, "financial institution" has
29 the meaning given in AS 06.01.050;

30 (2) an insurer regulated by AS 21, including a fraternal benefit society
31 regulated under AS 21.84;

- 1 (3) a business and industrial development corporation under AS 10.10;
 2 (4) a BIDCO under AS 10.13;
 3 (5) a cooperative under AS 10.15;
 4 (6) a cooperative under AS 10.25 (Electric and Telephone Cooperative
 5 Act);
 6 (7) a public corporation; or
 7 (8) a municipality.

8 **Sec. 10.55.120. Names.** Notwithstanding the other provisions of this chapter, if
 9 a domestic entity is created under this chapter or if the name of a domestic entity is
 10 changed under this chapter, the name of the domestic entity may not be a name that is
 11 reserved or registered to another entity under AS 10.35 and must comply with the
 12 name requirements of any organic law that applies to the domestic entity.

13 **Article 2. Merger.**

14 **Sec. 10.55.201. Merger authorized.** (a) Except as otherwise provided in
 15 AS 10.55.201 - 10.55.206, by complying with AS 10.55.201 - 10.55.206,

16 (1) one or more domestic entities may merge with one or more
 17 domestic or foreign entities into a domestic or foreign surviving entity; and

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

19 (b) Except as otherwise provided in this section, by complying with the
 20 provisions of AS 10.55.201 - 10.55.206 applicable to foreign entities, a foreign entity
 21 may be a party to a merger under AS 10.55.201 - 10.55.206 or may be the surviving
 22 entity in a merger if the merger is authorized by the law of the foreign entity's
 23 jurisdiction of organization.

24 (c) The provisions of AS 10.55.201 - 10.55.206 do not apply to

25 (1) a merger or consolidation under

26 (A) AS 10.06.530 - 10.06.562 or 10.06.960 (Alaska
 27 Corporations Code); or

28 (B) AS 10.50.500 - 10.50.565 (Alaska Revised Limited
 29 Liability Company Act); or

30 (2) a merger under

31 (A) AS 10.20.216 - 10.20.280 (Alaska Nonprofit Corporation

1 Act); or

2 (B) AS 32.06.905 - 32.06.907 (Uniform Partnership Act).

3 **Sec. 10.55.202. Plan of merger.** (a) A domestic entity may become a party to
4 a merger under AS 10.55.201 - 10.55.206 by approving a plan of merger. The plan
5 must be in a record and contain

6 (1) as to each merging entity, the merging entity's name, jurisdiction of
7 organization, and type;

8 (2) if the surviving entity is to be created in the merger, a statement to
9 that effect and the surviving entity's name, jurisdiction of organization, and type;

10 (3) the manner of converting the interests in each party to the merger
11 into interests, securities, obligations, rights to acquire interests or securities, cash, or
12 other property, or any combination of interests, securities, obligations, rights to
13 acquire interests or securities, cash, or other property;

14 (4) if the surviving entity exists before the merger, any proposed
15 amendments to the surviving entity's public organic document or private organic rules
16 that are, or are proposed to be, in a record;

17 (5) if the surviving entity is to be created in the merger, the surviving
18 entity's proposed public organic document, if any, and the full text of the surviving
19 entity's private organic rules that are proposed to be in a record;

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

21 (7) any other provision required by the law of a merging entity's
22 jurisdiction of organization or the organic rules of a merging entity.

23 (b) A plan of merger may contain any other provision not prohibited by law.

24 **Sec. 10.55.203. Approval of merger.** (a) A plan of merger is not effective
25 unless it has been approved

26 (1) by a domestic merging entity

27 (A) in accordance with the requirements, if any, in the merging
28 entity's organic law and organic rules for approval of,

29 (i) in the case of an entity that is not a business
30 corporation, a merger; or

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

1 requiring approval by a vote of the interest holders of the business
2 corporation; or

3 (B) if neither the merging entity's organic law nor organic rules
4 provide for approval of a merger described in (A)(ii) of this paragraph, by all
5 of the interest holders of the entity entitled to vote on or consent to any matter;
6 and

7 (2) in a record, by each interest holder of a domestic merging entity
8 that will have interest-holder liability for liabilities that arise after the merger becomes
9 effective, unless, in the case of an entity that is not a business corporation or nonprofit
10 corporation,

11 (A) the organic rules of the entity provide in a record for the
12 approval of a merger in which some or all of the entity's interest holders
13 become subject to interest-holder liability by the vote or consent of fewer than
14 all of the interest holders; and

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

18 (b) A merger involving a foreign merging entity is not effective unless it is
19 approved by the foreign entity in accordance with the law of the foreign entity's
20 jurisdiction of organization.

21 **Sec. 10.55.204. Amendment or abandonment of plan of merger.** (a) A plan
22 of merger of a domestic merging entity may be amended

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

25 (2) by the governors or interest holders of the entity in the manner
26 provided in the plan; however, an interest holder that was entitled to vote on or
27 consent to approval of the merger is entitled to vote on or consent to any amendment
28 of the plan that will change

29 (A) the amount or kind of interests, securities, obligations,
30 rights to acquire interests or securities, cash, or other property, or any
31 combination of interests, securities, obligations, rights to acquire interests or

1 securities, cash, or other property, to be received by the interest holders of any
2 party to the plan;

3 (B) the public organic document or private organic rules of the
4 surviving entity that will be in effect immediately after the merger becomes
5 effective, except for changes that do not require approval of the interest holders
6 of the surviving entity under its organic law or organic rules; or

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

9 (b) After a plan of merger has been approved by a domestic merging entity
10 and before a statement of merger becomes effective, the plan may be abandoned

11 (1) as provided in the plan; or

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

14 (c) If a plan of merger is abandoned after a statement of merger has been filed
15 with the department and before the filing becomes effective, a statement of
16 abandonment, signed on behalf of a merging entity, must be filed with the department
17 before the time the statement of merger becomes effective. The statement of
18 abandonment takes effect on filing, and the merger is abandoned and does not become
19 effective. The statement of abandonment must contain

20 (1) the name of each merging or surviving entity that is a domestic
21 entity or a qualified foreign entity;

22 (2) the date on which the statement of merger was filed; and

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

25 **Sec. 10.55.205. Statement of merger; effective date.** (a) A statement of
26 merger shall be signed on behalf of each merging entity and filed with the department.

27 (b) A statement of merger must contain

28 (1) the name, jurisdiction of organization, and type of each merging
29 entity that is not the surviving entity;

30 (2) the name, jurisdiction of organization, and type of the surviving
31 entity;

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

4 (4) a statement that the merger was approved by each domestic
5 merging entity, if any, in accordance with AS 10.55.201 - 10.55.206 and by each
6 foreign merging entity, if any, in accordance with the law of the foreign merging
7 entity's jurisdiction of organization;

8 (5) if the surviving entity exists before the merger and is a domestic
9 filing entity, any amendment to the surviving entity's public organic document
10 approved as part of the plan of merger;

11 (6) if the surviving entity is created by the merger and is a domestic
12 filing entity, the surviving entity's public organic document, as an attachment;

13 (7) if the surviving entity is created by the merger and is a domestic
14 limited liability partnership, the surviving entity's statement of qualification, as an
15 attachment; and

16 (8) if the surviving entity is a foreign entity that is not a qualified
17 foreign entity, a mailing address to which the department may send any process served
18 on the commissioner under AS 10.55.206(e).

19 (c) In addition to the requirements of (b) of this section, a statement of merger
20 may contain any other provision not prohibited by law.

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

25 (e) A plan of merger that is signed on behalf of all of the merging entities and
26 meets all of the requirements of (b) of this section may be filed with the department
27 instead of a statement of merger and, on filing, has the same effect as a statement of
28 merger. If a plan of merger is filed as provided in this subsection, references in this
29 chapter to a statement of merger refer to the plan of merger filed under this subsection.

30 (f) A statement of merger becomes effective on the date and time of filing or
31 the later date and time specified in the statement of merger under (b)(3) of this section.

1 **Sec. 10.55.206. Effect of merger.** (a) When a merger becomes effective,

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

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

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

6 (4) all liabilities of each merging entity are liabilities of the surviving
7 entity;

8 (5) except as otherwise provided by law other than this chapter or the
9 plan of merger, all of the rights, privileges, immunities, powers, and purposes of each
10 merging entity vest in the surviving entity;

11 (6) if the surviving entity exists before the merger,

12 (A) all of the surviving entity's property continues to be vested
13 in it without reversion or impairment;

14 (B) the surviving entity remains subject to all of its liabilities;
15 and

16 (C) all of the surviving entity's rights, privileges, immunities,
17 powers, and purposes continue to be vested in it;

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

20 (8) if the surviving entity exists before the merger,

21 (A) the surviving entity's public organic document, if any, is
22 amended as provided in the statement of merger and is binding on its interest
23 holders; and

24 (B) the surviving entity's private organic rules that are to be in
25 a record, if any, are amended to the extent provided in the plan of merger and
26 are binding on and enforceable by

27 (i) the surviving entity's interest holders; and

28 (ii) in the case of a surviving entity that is not a
29 business corporation or a nonprofit corporation, any other person that is
30 a party to an agreement that is part of the surviving entity's private
31 organic rules;

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- (9) if the surviving entity is created by the merger,
 - (A) and if the surviving entity is a domestic entity, the surviving entity is subject to the organic law in this state that governs the internal affairs of the type of entity of the surviving entity;
 - (B) the surviving entity's public organic document, if any, is effective and is binding on its interest holders; and
 - (C) the surviving entity's private organic rules are effective and are binding on and enforceable by
 - (i) the surviving entity's interest holders; and
 - (ii) in the case of a surviving entity that is not a business corporation or a nonprofit corporation, any other person that was a party to an agreement that was part of the organic rules of a merging entity if that person has agreed to be a party to an agreement that is part of the surviving entity's private organic rules; and
- (10) the interests in each merging entity that are to be converted in the merger are converted, and the interest holders of those interests are entitled only to the rights provided to them under the plan of merger and to any dissenters' rights they have under AS 10.55.109 and the merging entity's organic law.
 - (b) Except as otherwise provided in the organic law or organic rules of a merging entity, the merger does not give rise to any rights that an interest holder, governor, or third party would otherwise have upon a dissolution, liquidation, or winding up of the merging entity.
 - (c) When a merger becomes effective, a person that did not have interest-holder liability with respect to any of the merging entities and that becomes subject to interest-holder liability with respect to a domestic entity as a result of a merger has interest-holder liability only to the extent provided by the organic law of the entity and only for those liabilities that arise after the merger becomes effective.
 - (d) When a merger becomes effective, the interest-holder liability of a person that ceases to hold an interest in a domestic merging entity with respect to which the person had interest-holder liability is as follows:
 - (1) the merger does not discharge any interest-holder liability under the

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1 organic law of the domestic merging entity to the extent the interest-holder liability
2 arose before the merger became effective;

3 (2) the person does not have interest-holder liability under the organic
4 law of the domestic merging entity for any liability that arises after the merger
5 becomes effective;

6 (3) the organic law of the domestic merging entity continues to apply
7 to the release, collection, or discharge of any interest-holder liability preserved under
8 (1) of this subsection as if the merger had not occurred and the surviving entity were
9 the domestic merging entity; and

10 (4) the person has whatever rights of contribution from any other
11 person as are provided by the organic law or organic rules of the domestic merging
12 entity with respect to any interest-holder liability preserved under (1) of this
13 subsection as if the merger had not occurred.

14 (e) When a merger becomes effective, a foreign entity that is the surviving
15 entity

16 (1) may be served with process in this state for the collection and
17 enforcement of any liabilities of a domestic merging entity; and

18 (2) appoints the commissioner as the foreign entity's agent for service
19 of process for collecting or enforcing those liabilities.

20 (f) When a merger becomes effective, the certificate of authority or other
21 foreign qualification of any foreign merging entity that is not the surviving entity is
22 cancelled.

23 **Article 3. Interest Exchange.**

24 **Sec. 10.55.301. Interest exchange authorized.** (a) Except as otherwise
25 provided in this section, by complying with AS 10.55.301 - 10.55.306,

26 (1) a domestic entity may acquire all of one or more classes or series of
27 interests of another domestic or foreign entity in exchange for interests, securities,
28 obligations, rights to acquire interests or securities, cash, or other property, or any
29 combination of interests, securities, obligations, rights to acquire interests or
30 securities, cash, or other property; or

31 (2) all of one or more classes or series of interests of a domestic entity

1 may be acquired by another domestic or foreign entity in exchange for interests,
2 securities, obligations, rights to acquire interests or securities, cash, or other property,
3 or any combination of interests, securities, obligations, rights to acquire interests or
4 securities, cash, or other property.

5 (b) Except as otherwise provided in this section, by complying with the
6 provisions of AS 10.55.301 - 10.55.306 applicable to foreign entities, a foreign entity
7 may be the acquiring or acquired entity in an interest exchange under AS 10.55.301 -
8 10.55.306 if the interest exchange is authorized by the law of the foreign entity's
9 jurisdiction of organization.

10 (c) Unless the provision is amended after July 1, 2014, if a protected
11 agreement contains a provision that applies to a merger of a domestic entity but does
12 not refer to an interest exchange, the provision applies to an interest exchange in
13 which the domestic entity is the acquired entity as if the interest exchange were a
14 merger.

15 (d) The provisions of AS 10.55.301 - 10.55.306 do not apply to a share
16 exchange under AS 10.06.530 - 10.06.582 or 10.06.960; in this subsection, "share
17 exchange" means a share exchange authorized by AS 10.06.538 or an exchange
18 regulated by AS 10.06.960.

19 **Sec. 10.55.302. Plan of interest exchange.** (a) A domestic entity may be the
20 acquired entity in an interest exchange under AS 10.55.301 - 10.55.306 by approving a
21 plan of interest exchange. The plan must be in a record and contain

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

23 (2) the name, jurisdiction of organization, and type of the acquiring
24 entity;

25 (3) the manner of converting the interests in the acquired entity into
26 interests, securities, obligations, rights to acquire interests or securities, cash, or other
27 property, or any combination of interests, securities, obligations, rights to acquire
28 interests or securities, cash, or other property;

29 (4) any proposed amendments to the public organic document or
30 private organic rules that are, or are proposed to be, in a record of the acquired entity;

31 (5) the other terms and conditions of the interest exchange; and

1 (6) any other provision required by the law of this state or the organic
2 rules of the acquired entity.

3 (b) A plan of interest exchange may contain any other provision not prohibited
4 by law.

5 **Sec. 10.55.303. Approval of interest exchange.** (a) A plan of interest
6 exchange is not effective unless it has been approved

7 (1) by a domestic acquired entity

8 (A) in accordance with the requirements, if any, in the acquired
9 entity's organic law and organic rules for approval of an interest exchange;

10 (B) except as otherwise provided in (d) of this section, if
11 neither the acquired entity's organic law nor organic rules provide for approval
12 of an interest exchange, in accordance with the requirements, if any, in the
13 acquired entity's organic law and organic rules for approval of,

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

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

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

23 (2) in a record, by each interest holder of a domestic acquired entity
24 that will have interest-holder liability for liabilities that arise after the interest
25 exchange becomes effective, unless, in the case of an entity that is not a business
26 corporation or nonprofit corporation,

27 (A) the organic rules of the entity provide in a record for the
28 approval of an interest exchange or a merger in which some or all of the
29 entity's interest holders become subject to interest-holder liability by the vote
30 or consent of fewer than all of the interest holders; and

31 (B) the interest holder voted for or consented in a record to that

1 provision of the organic rules or became an interest holder after the adoption of
2 that provision.

3 (b) An interest exchange involving a foreign acquired entity is not effective
4 unless it is approved by the foreign entity in accordance with the law of the foreign
5 entity's jurisdiction of organization.

6 (c) Except as otherwise provided in the acquiring entity's organic law or
7 organic rules, the interest holders of the acquiring entity are not required to approve
8 the interest exchange.

9 (d) A provision of the organic law of a domestic acquired entity that would
10 permit a merger between the acquired entity and the acquiring entity to be approved
11 without the vote or consent of the interest holders of the acquired entity because of the
12 percentage of interests in the acquired entity held by the acquiring entity does not
13 apply to approval of an interest exchange under (a)(1)(B) of this section.

14 **Sec. 10.55.304. Amendment or abandonment of plan of interest exchange.**

15 (a) A plan of interest exchange of a domestic acquired entity may be amended

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

18 (2) by the governors or interest holders of the entity in the manner
19 provided in the plan; however, an interest holder that was entitled to vote on or
20 consent to approval of the interest exchange is entitled to vote on or consent to any
21 amendment of the plan that will change

22 (A) the amount or kind of interests, securities, obligations,
23 rights to acquire interests or securities, cash, or other property, or any
24 combination of interests, securities, obligations, rights to acquire interests or
25 securities, cash, or other property, to be received by any of the interest holders
26 of the acquired entity under the plan;

27 (B) the public organic document or private organic rules of the
28 acquired entity that will be in effect immediately after the interest exchange
29 becomes effective, except for changes that do not require approval of the
30 interest holders of the acquired entity under its organic law or organic rules; or

31 (C) any other terms or conditions of the plan, if the change

1 would adversely affect the interest holder in any material respect.

2 (b) After a plan of interest exchange has been approved by a domestic
3 acquired entity and before a statement of interest exchange becomes effective, the plan
4 may be abandoned

5 (1) as provided in the plan; or

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

8 (c) If a plan of interest exchange is abandoned after a statement of interest
9 exchange has been filed with the department and before the filing becomes effective, a
10 statement of abandonment, signed on behalf of the acquired entity, must be filed with
11 the department before the time the statement of interest exchange becomes effective.
12 The statement of abandonment takes effect on filing, and the interest exchange is
13 abandoned and does not become effective. The statement of abandonment must
14 contain

15 (1) the name of the acquired entity;

16 (2) the date on which the statement of interest exchange was filed; and

17 (3) a statement that the interest exchange has been abandoned in
18 accordance with this section.

19 **Sec. 10.55.305. Statement of interest exchange; effective date.** (a) A
20 statement of interest exchange shall be signed on behalf of a domestic acquired entity
21 and filed with the department.

22 (b) A statement of interest exchange must contain

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

24 (2) the name, jurisdiction of organization, and type of the acquiring
25 entity;

26 (3) if the statement of interest exchange is not to be effective upon
27 filing, the later date and time on which it will become effective, which may not be
28 more than 90 days after the date of filing;

29 (4) a statement that the plan of interest exchange was approved by the
30 acquired entity in accordance with AS 10.55.301 - 10.55.306; and

31 (5) any amendments to the acquired entity's public organic document

1 approved as part of the plan of interest exchange.

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

4 (d) A plan of interest exchange that is signed on behalf of a domestic acquired
5 entity and meets all of the requirements of (b) of this section may be filed with the
6 department instead of a statement of interest exchange and, on filing, has the same
7 effect as a statement of interest or exchange. If a plan of interest exchange is filed as
8 provided in this subsection, references in this chapter to a statement of interest
9 exchange refer to the plan of interest exchange filed under this subsection.

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

12 **Sec. 10.55.306. Effect of interest exchange.** (a) When an interest exchange
13 becomes effective,

14 (1) the interests in the acquired entity that are the subject of the interest
15 exchange cease to exist or are converted or exchanged, and the interest holders of
16 those interests are entitled only to the rights provided to them under the plan of interest
17 exchange and to any dissenters' rights they have under AS 10.55.109 and the acquired
18 entity's organic law;

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

22 (3) the public organic document, if any, of the acquired entity is
23 amended as provided in the statement of interest exchange and is binding on the
24 acquired entity's interest holders; and

25 (4) the private organic rules of the acquired entity that are to be in a
26 record, if any, are amended to the extent provided in the plan of interest exchange and
27 are binding on and enforceable by

28 (A) the acquired entity's interest holders; and

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

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

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

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

14 (1) the interest exchange does not discharge any interest-holder
15 liability under the organic law of the domestic acquired entity to the extent the
16 interest-holder liability arose before the interest exchange became effective;

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

20 (3) the organic law of the domestic acquired entity continues to apply
21 to the release, collection, or discharge of any interest-holder liability preserved under
22 (1) of this subsection as if the interest exchange had not occurred; and

23 (4) the person has whatever rights of contribution from any other
24 person as are provided by the organic law or organic rules of the domestic acquired
25 entity with respect to any interest-holder liability preserved under (1) of this
26 subsection as if the interest exchange had not occurred.

27 **Article 4. Conversion.**

28 **Sec. 10.55.401. Conversion authorized.** (a) Except as otherwise provided in
29 this section, by complying with AS 10.55.401 - 10.55.406, a domestic entity may
30 become

31 (1) a domestic entity of a different type; or

1 (2) a foreign entity of a different type, if the conversion is authorized
2 by the law of the foreign jurisdiction.

3 (b) Except as otherwise provided in this section, by complying with the
4 provisions of AS 10.55.401 - 10.55.406 applicable to foreign entities, a foreign entity
5 may become a domestic entity of a different type if the conversion is authorized by the
6 law of the foreign entity's jurisdiction of organization.

7 (c) Unless the provision is amended after July 1, 2014, if a protected
8 agreement contains a provision that applies to a merger of a domestic entity but does
9 not refer to a conversion, the provision applies to a conversion of the entity as if the
10 conversion were a merger.

11 **Sec. 10.55.402. Plan of conversion.** (a) A domestic entity may convert to a
12 different type of entity under AS 10.55.401 - 10.55.406 by approving a plan of
13 conversion. The plan must be in a record and contain

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

15 (2) the name, jurisdiction of organization, and type of the converted
16 entity;

17 (3) the manner of converting the interests in the converting entity into
18 interests, securities, obligations, rights to acquire interests or securities, cash, or other
19 property, or any combination of interests, securities, obligations, rights to acquire
20 interests or securities, cash, or other property;

21 (4) the proposed public organic document of the converted entity, if
22 the converted entity will be a filing entity;

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

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

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

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

30 **Sec. 10.55.403. Approval of conversion.** (a) A plan of conversion is not
31 effective unless it has been approved

1 (1) by a domestic converting entity

2 (A) in accordance with the requirements, if any, in the
3 converted entity's organic rules for approval of a conversion;

4 (B) if the converted entity's organic rules do not provide for
5 approval of a conversion, in accordance with the requirements, if any, in the
6 converted entity's organic law and organic rules for approval of,

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

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

12 (C) if neither its organic law nor organic rules provide for
13 approval of a conversion or a merger described in (B)(ii) of this paragraph, by
14 all of the interest holders of the entity entitled to vote on or consent to any
15 matter; and

16 (2) in a record, by each interest holder of a domestic converting entity
17 that will have interest-holder liability for liabilities that arise after the conversion
18 becomes effective, unless, in the case of an entity that is not a business or nonprofit
19 corporation,

20 (A) the organic rules of the entity provide in a record for the
21 approval of a conversion or a merger in which some or all of the entity's
22 interest holders become subject to interest-holder liability by the vote or
23 consent of fewer than all of the interest holders; and

24 (B) the interest holder voted for or consented in a record to that
25 provision of the organic rules or became an interest holder after the adoption of
26 that provision.

27 (b) A conversion of a foreign converting entity is not effective unless it is
28 approved by the foreign entity in accordance with the law of the foreign entity's
29 jurisdiction of organization.

30 **Sec. 10.55.404. Amendment or abandonment of plan of conversion.** (a) A
31 plan of conversion of a domestic converting entity may be amended

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

3 (2) by the governors or interest holders of the entity in the manner
4 provided in the plan; however, an interest holder that was entitled to vote on or
5 consent to approval of the conversion is entitled to vote on or consent to any
6 amendment of the plan that will change

7 (A) the amount or kind of interests, securities, obligations,
8 rights to acquire interests or securities, cash, or other property, or any
9 combination of interests, securities, cash, or other property, to be received by
10 any of the interest holders of the converting entity under the plan;

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

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

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

21 (1) as provided in the plan; or

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

24 (c) If a plan of conversion is abandoned after a statement of conversion has
25 been filed with the department and before the filing becomes effective, a statement of
26 abandonment, signed on behalf of the entity, must be filed with the department before
27 the time the statement of conversion becomes effective. The statement of
28 abandonment takes effect on filing, and the conversion is abandoned and does not
29 become effective. The statement of abandonment must contain

30 (1) the name of the converting entity;

31 (2) the date on which the statement of conversion was filed; and

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

3 **Sec. 10.55.405. Statement of conversion; effective date.** (a) A statement of
4 conversion shall be signed on behalf of the converting entity and filed with the
5 department.

6 (b) A statement of conversion must contain

7 (1) the name, jurisdiction of organization, and type of the converting
8 entity;

9 (2) the name, jurisdiction of organization, and type of the converted
10 entity;

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

14 (4) if the converting entity is a

15 (A) domestic entity, a statement that the plan of conversion was
16 approved in accordance with AS 10.55.401 - 10.55.406; or

17 (B) foreign entity, a statement that the conversion was
18 approved by the foreign converting entity in accordance with the law of its
19 jurisdiction of organization;

20 (5) if the converted entity is a domestic filing entity, the text of the
21 converted entity's public organic document, as an attachment;

22 (6) if the converted entity is a domestic limited liability partnership,
23 the text of the converted entity's statement of qualification, as an attachment; and

24 (7) if the converted entity is a foreign entity that is not a qualified
25 foreign entity, a mailing address to which the department may send any process served
26 on the commissioner under AS 10.55.406(e).

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

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

1 included in a restatement of the public organic document.

2 (e) A plan of conversion that is signed on behalf of a domestic converting
3 entity and meets all of the requirements of (b) of this section may be filed with the
4 department instead of a statement of conversion and, on filing, has the same effect as a
5 statement of conversion. If a plan of conversion is filed as provided in this subsection,
6 references in this chapter to a statement of conversion refer to the plan of conversion
7 filed under this subsection.

8 (f) A statement of conversion becomes effective on the date and time of filing
9 or the later date and time specified in the statement of conversion under (b)(3) of this
10 section.

11 **Sec. 10.55.406. Effect of conversion.** (a) When a conversion becomes
12 effective,

13 (1) the converted entity is

14 (A) organized under and subject to the organic law of the
15 converted entity; and

16 (B) the same entity without interruption as the converting
17 entity;

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

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

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

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

27 (6) if a converted entity is a filing entity, the converted entity's public
28 organic document is effective and is binding on its interest holders;

29 (7) if the converted entity is a limited liability partnership, the
30 converted entity's statement of qualification is effective simultaneously;

31 (8) the private organic rules of the converted entity that are to be in a

1 record, if any, approved as part of the plan of conversion are effective and are binding
2 on and enforceable by

3 (A) the converted entity's interest holders; and

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

7 (9) the interests in the converting entity are converted, and the interest
8 holders of the converting entity are entitled only to the rights provided to them under
9 the plan of conversion and to any dissenters' rights they have under AS 10.55.109 and
10 the converting entity's organic law.

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

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

20 (d) When a conversion becomes effective,

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

24 (2) a person does not have interest-holder liability under the organic
25 law of a domestic converting entity for any liability that arises after the conversion
26 becomes effective;

27 (3) the organic law of a domestic converting entity continues to apply
28 to the release, collection, or discharge of any interest-holder liability preserved under
29 (1) of this subsection as if the conversion had not occurred; and

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

1 with respect to any interest-holder liability preserved under (1) of this subsection as if
2 the conversion had not occurred.

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

5 (1) may be served with process in this state for the collection and
6 enforcement of any of the foreign entity's liabilities; and

7 (2) appoints the commissioner as the foreign entity's agent for service
8 of process for collecting or enforcing those liabilities.

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

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

14 **Article 5. Domestication.**

15 **Sec. 10.55.501. Domestication authorized.** (a) Except as otherwise provided
16 in this section, by complying with AS 10.55.501 - 10.55.506, a domestic entity may
17 become a domestic entity of the same type in a foreign jurisdiction if the
18 domestication is authorized by the law of the foreign jurisdiction.

19 (b) Except as otherwise provided in this section, by complying with the
20 provisions of AS 10.55.501 - 10.55.506 applicable to foreign entities a foreign entity
21 may become a domestic entity of the same type in this state if the domestication is
22 authorized by the law of the foreign entity's jurisdiction of organization.

23 (c) Unless the provision is amended after July 1, 2014, if a protected
24 agreement contains a provision that applies to a merger of a domestic entity but does
25 not refer to a domestication, the provision applies to a domestication of the entity as if
26 the domestication were a merger.

27 **Sec. 10.55.502. Plan of domestication.** (a) A domestic entity may become a
28 foreign entity in a domestication by approving a plan of domestication. The plan must
29 be in a record and contain

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

31 (2) the name and jurisdiction of organization of the domesticated

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entity;

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

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

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

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

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

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

Sec. 10.55.503. Approval of domestication. (a) A plan of domestication is not effective unless it has been approved

(1) by a domestic domesticating entity

(A) in accordance with the requirements, if any, in the domestic domesticating entity's organic rules for approval of a domestication;

(B) if the domestic domesticating entity's organic rules do not provide for approval of a domestication, in accordance with the requirements, if any, in its organic law and organic rules for approval of

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

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

(C) if neither the domestic domesticating entity's organic law nor organic rules provide for approval of a domestication or a merger described in (B)(ii) of this paragraph, by all of the interest holders of the entity entitled to vote on or consent to any matter; and

1 (2) in a record, by each interest holder of a domestic domesticating
2 entity that will have interest-holder liability for liabilities that arise after the
3 domestication becomes effective, unless, in the case of an entity that is not a business
4 corporation or nonprofit corporation,

5 (A) the organic rules of the entity in a record provide for the
6 approval of a domestication or merger in which some or all of the entity's
7 interest holders become subject to interest-holder liability by the vote or
8 consent of fewer than all of the interest holders; and

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

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

15 **Sec. 10.55.504. Amendment or abandonment of plan of domestication.** (a)
16 A plan of domestication of a domestic domesticating entity may be amended

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

19 (2) by the governors or interest holders of the entity in the manner
20 provided in the plan; however, but an interest holder that was entitled to vote on or
21 consent to approval of the domestication is entitled to vote on or consent to any
22 amendment of the plan that will change

23 (A) the amount or kind of interests, securities, obligations,
24 rights to acquire interests or securities, cash, or other property, or any
25 combination of interests, securities, obligations, rights to acquire interests or
26 securities, cash, or other property, to be received by any of the interest holders
27 of the domesticating entity under the plan;

28 (B) the public organic document or private organic rules of the
29 domesticated entity that will be in effect immediately after the domestication
30 becomes effective, except for changes that do not require approval of the
31 interest holders of the domesticated entity under its organic law or organic

1 rules; or

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

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

7 (1) as provided in the plan; or

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

10 (c) If a plan of domestication is abandoned after a statement of domestication
11 has been filed with the department and before the filing becomes effective, a statement
12 of abandonment, signed on behalf of the entity, shall be filed with the department
13 before the time the statement of domestication becomes effective. The statement of
14 abandonment takes effect upon filing, and the domestication is abandoned and does
15 not become effective. The statement of abandonment must contain

16 (1) the name of the domesticating entity;

17 (2) the date on which the statement of domestication was filed; and

18 (3) a statement that the domestication has been abandoned in
19 accordance with this section.

20 **Sec. 10.55.505. Statement of domestication; effective date.** (a) A statement
21 of domestication shall be signed on behalf of the domesticating entity and filed with
22 the department.

23 (b) A statement of domestication must contain

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

26 (2) the name and jurisdiction of organization of the domesticated
27 entity;

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

31 (4) if the domesticating entity is a

1 (A) domestic entity, a statement that the plan of domestication
2 was approved in accordance with AS 10.55.501 - 10.55.506; or

3 (B) foreign entity, a statement that the domestication was
4 approved in accordance with the law of its jurisdiction of organization;

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

7 (6) if the domesticated entity is a domestic limited liability partnership,
8 the domesticated entity's statement of qualification, as an attachment; and

9 (7) if the domesticated entity is a foreign entity that is not a qualified
10 foreign entity, a mailing address to which the department may send any process served
11 on the commissioner under AS 10.55.506(e).

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

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

18 (e) A plan of domestication that is signed on behalf of a domestic
19 domesticating entity and meets all of the requirements of (b) of this section may be
20 filed with the department instead of a statement of domestication and, on filing, has
21 the same effect as a statement of domestication. If a plan of domestication is filed as
22 provided in this subsection, references in this chapter to a statement of domestication
23 refer to the plan of domestication filed under this subsection.

24 (f) A statement of domestication becomes effective on the date and time of
25 filing or the later date and time specified in the statement of domestication.

26 **Sec. 10.55.506. Effect of domestication.** (a) When a domestication becomes
27 effective,

28 (1) the domesticated entity is

29 (A) organized under and subject to the organic law of the
30 domesticated entity; and

31 (B) the same entity without interruption as the domesticating

- 1 entity;
- 2 (2) all property of the domesticating entity continues to be vested in
- 3 the domesticated entity without assignment, reversion, or impairment;
- 4 (3) all liabilities of the domesticating entity continue as liabilities of
- 5 the domesticated entity;
- 6 (4) except as provided by law other than this chapter or the plan of
- 7 domestication, all of the rights, privileges, immunities, powers, and purposes of the
- 8 domesticating entity remain in the domesticated entity;
- 9 (5) the name of the domesticated entity may be substituted for the
- 10 name of the domesticating entity in any pending action or proceeding;
- 11 (6) if the domesticated entity is a filing entity, the domesticated entity's
- 12 public organic document is effective and is binding on its interest holders;
- 13 (7) if the domesticated entity is a limited liability partnership, the
- 14 domesticated entity's statement of qualification is effective simultaneously;
- 15 (8) the private organic rules of the domesticated entity that are to be in
- 16 a record, if any, approved as part of the plan of domestication are effective and are
- 17 binding on and enforceable by
- 18 (A) the domesticated entity's interest holders; and
- 19 (B) in the case of a domesticated entity that is not a business
- 20 corporation or nonprofit corporation, any other person that is a party to an
- 21 agreement that is part of the domesticated entity's private organic rules; and
- 22 (9) the interests in the domesticating entity are converted to the extent
- 23 and as approved in connection with the domestication, and the interest holders of the
- 24 domesticating entity are entitled only to the rights provided to them under the plan of
- 25 domestication and to any dissenters' rights they have under AS 10.55.109 and the
- 26 domesticating entity's organic law.
- 27 (b) Except as otherwise provided in the organic law or organic rules of the
- 28 domesticating entity, the domestication does not give rise to any rights that an interest
- 29 holder, governor, or third party would otherwise have upon a dissolution, liquidation,
- 30 or winding up of the domesticating entity.
- 31 (c) When a domestication becomes effective, a person that did not have

1 interest-holder liability with respect to the domesticating entity and that becomes
2 subject to interest-holder liability with respect to a domestic entity as a result of the
3 domestication has interest-holder liability only to the extent provided by the organic
4 law of the entity and only for those liabilities that arise after the domestication
5 becomes effective.

6 (d) When a domestication becomes effective,

7 (1) the domestication does not discharge any interest-holder liability
8 under the organic law of a domestic domesticating entity to the extent the interest-
9 holder liability arose before the domestication became effective;

10 (2) a person does not have interest-holder liability under the organic
11 law of a domestic domesticating entity for any liability that arises after the
12 domestication becomes effective;

13 (3) the organic law of a domestic domesticating entity continues to
14 apply to the release, collection, or discharge of any interest-holder liability preserved
15 under (1) of this subsection as if the domestication had not occurred; and

16 (4) a person has whatever rights of contribution from any other person
17 as are provided by the organic law or organic rules of a domestic domesticating entity
18 with respect to any interest-holder liability preserved under (1) of this subsection as if
19 the domestication had not occurred.

20 (e) When a domestication becomes effective, a foreign entity that is the
21 domesticated entity

22 (1) may be served with process in this state for the collection and
23 enforcement of any of the foreign entity's liabilities; and

24 (2) appoints the commissioner as the foreign entity's agent for service
25 of process for collecting or enforcing those liabilities.

26 (f) If the domesticating entity is a qualified foreign entity, the certificate of
27 authority or other foreign qualification of the domesticating entity is cancelled when
28 the domestication becomes effective.

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

31 **Article 6. Filings.**

1 **Sec. 10.55.601. Requirements for documents.** (a) To be entitled to filing by
2 the department under this chapter, a document must satisfy the following requirements
3 and the requirements of any other provision of this chapter that adds to or varies these
4 requirements:

5 (1) this chapter must require or permit filing the document with the
6 department;

7 (2) the document must contain the information required by this chapter
8 and may contain other information;

9 (3) the document must be in a record;

10 (4) the document must be in the English language; however, the name
11 of an entity need not be in English if written in English letters or Arabic or Roman
12 numerals;

13 (5) the document must be signed

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

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

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

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

22 (7) the document must be delivered to the department for filing;
23 delivery may be made by electronic transmission if and to the extent permitted by the
24 department; if a document is filed in typewritten or printed form and not transmitted
25 electronically, the department may require one exact or conformed copy to be
26 delivered with the document.

27 (b) When a document is delivered to the department for filing, the correct
28 filing fee and any franchise tax, license fee, or penalty required to be paid for the filing
29 by this chapter or other law must be paid or provision for payment made in a manner
30 permitted by the department.

31 **Sec. 10.55.602. Forms.** The department may prescribe and furnish on request

1 forms for documents required or permitted to be filed by this chapter, but their use is
2 not mandatory.

3 **Sec. 10.55.603. Filing, service, and copying fees.** (a) The department shall
4 collect a fee each time process is served on the commissioner under this chapter. The
5 party to a proceeding causing service of process may recover this fee as costs if the
6 party prevails in the proceeding.

7 (b) The department shall collect the fees for copying and certifying the copy
8 of any document filed under this chapter for copying and for the certificate.

9 (c) The department shall collect fees when the following documents are
10 delivered for filing:

- 11 (1) statement of merger;
- 12 (2) statement of abandonment of merger;
- 13 (3) statement of interest exchange;
- 14 (4) statement of abandonment of interest exchange;
- 15 (5) statement of conversion;
- 16 (6) statement of abandonment of conversion;
- 17 (7) statement of domestication;
- 18 (8) statement of abandonment of domestication.

19 (d) The department shall establish by regulation under AS 44.62
20 (Administrative Procedure Code) the amount of the fees to be collected under this
21 section.

22 **Sec. 10.55.604. Effective time and date of document.** Except as provided in
23 AS 10.55.605, a document accepted for filing is effective

24 (1) at the date and time of filing, as evidenced by the means used by
25 the department for recording the date and time of filing;

26 (2) at the time specified in the document as its effective time on the
27 date it is filed;

28 (3) at a specified delayed effective time and date, if permitted by this
29 chapter; or

30 (4) if a delayed effective date but no time is specified, at the close of
31 business on the date specified.

1 **Sec. 10.55.605. Correcting filed document.** (a) A domestic or foreign entity
2 may correct a document filed by the department if

3 (1) the document contains an inaccuracy;
4 (2) the document was defectively signed; or
5 (3) the electronic transmission of the document to the department was
6 defective.

7 (b) A document is corrected by filing with the department a statement of
8 correction that

9 (1) describes the document to be corrected and states the filing date of
10 the document to be corrected or has attached a copy of the document;

11 (2) specifies the inaccuracy or defect to be corrected; and

12 (3) corrects the inaccuracy or defect.

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

17 **Sec. 10.55.606. Filing duty of department.** (a) A document delivered to the
18 department for filing that satisfies the requirements of AS 10.55.601 shall be filed by
19 the department.

20 (b) The department files a document by recording it as filed on the date and
21 time of receipt. After filing a document, the department shall deliver to the domestic
22 or foreign entity or its representative a copy of the document with an acknowledgment
23 of the date and time of filing.

24 (c) If the department refuses to file a document, the department shall return the
25 document to the domestic or foreign entity or its representative within 10 days after
26 the document was delivered, together with a brief, written explanation of the reason
27 for the refusal.

28 (d) The duty of the department to file documents under this section is
29 ministerial. The filing or refusal to file a document does not

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

31 (2) relate to the correctness or incorrectness of information contained

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in the document; or

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

Sec. 10.55.607. Appeal from refusal to file a document. (a) If the department refuses to file a document delivered for filing, the domestic or foreign entity that submitted the document for filing may, within 30 days after the return of the document, appeal the refusal to the superior court of the judicial district where the entity's principal office, or, if the entity does not have a principal office in this state, where its registered office is or will be located. The appeal is begun by petitioning the court to compel filing the document and by attaching to the petition the document and the explanation of the department for the refusal to file.

(b) The court may summarily order the department to file the document or take other action the court considers appropriate.

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

Sec. 10.55.608. Evidentiary effect of copy of filed document. A certificate from the department, delivered with a copy of a document filed by the department, conclusively establishes that the original document is on file with the department.

Sec. 10.55.609. Penalty for signing false document. A person who signs a document the person knows is false in any material respect with intent that the document be delivered to the department for filing under this chapter is guilty of a class A misdemeanor.

Sec. 10.55.610. Interrogatories by department; judicial review. (a) The department may propound to a domestic or foreign entity that is a party to a transaction under this chapter interrogatories reasonably necessary and proper to enable the department to ascertain whether the entity has complied with the provisions of this chapter.

(b) Interrogatories shall be answered within 30 days or within the additional time fixed by the department. Answers shall be full and complete, in writing and under oath. If the interrogatories are directed to an individual, the interrogatories shall be answered by that person, and, if directed to an entity, the interrogatories shall be answered by the president, vice-president, secretary, or assistant secretary of the

1 corporation or, in the instance of a foreign corporation, the person or persons
2 functioning as comparable officers in accordance with the laws of the state of
3 incorporation.

4 (c) A petition stating good cause to extend the date to answer, modify, or set
5 aside the interrogatories propounded by the department, or to enforce compliance with
6 AS 10.55.620 may be filed in the superior court before the expiration of the 30 days
7 fixed in this section for answer.

8 **Sec. 10.55.615. Confidentiality of information disclosed by interrogatories.**
9 Interrogatories and answers propounded and obtained under AS 10.55.610 are not
10 open to public inspection and the department may not disclose facts or information
11 obtained from the interrogatories except as the official duty of the department requires
12 or unless the interrogatories or the answers are required for evidence in criminal
13 proceedings or other action by the state.

14 **Sec. 10.55.620. Failure or refusal to answer interrogatories.** Unless
15 otherwise provided by an order of court issued in response to a petition filed under
16 AS 10.55.610,

17 (1) an entity that fails or refuses to answer truthfully and fully
18 interrogatories propounded by the department within the time prescribed by
19 AS 10.55.610(b) is guilty of a class A misdemeanor; and

20 (2) the department need not file a document to which the
21 interrogatories relate until the interrogatories are properly answered and need not file a
22 document to which the interrogatories relate if the answers disclose that the document
23 does not conform to the provisions of this chapter.

24 **Sec. 10.55.625. Powers of department.** The department has the power
25 reasonably necessary to perform the duties required by this chapter.

26 **Article 7. Miscellaneous Provisions.**

27 **Sec. 10.55.701. Consistency of application.** In applying and construing this
28 chapter, consideration shall be given to the need to promote consistency of the law
29 with respect to its subject matter among states that enact it.

30 **Sec. 10.55.702. Relation to Electronic Signatures in Global and National**
31 **Commerce Act.** This chapter modifies, limits, and supersedes 15 U.S.C. 7001 - 7031

1 (Electronic Signatures in Global and National Commerce Act), but does not modify,
 2 limit, or supersede 15 U.S.C. 7001(c), or authorize electronic delivery of any of the
 3 notices described in 15 U.S.C. 7003(b).

4 **Article 8. Definitions and Title.**

5 **Sec. 10.55.901. Definitions.** In this chapter,

6 (1) "acquired entity" means the entity, all of one or more classes or
 7 series of interests in which are acquired in an interest exchange;

8 (2) "acquiring entity" means the entity that acquires all of one or more
 9 classes or series of interests of the acquired entity in an interest exchange;

10 (3) "approve" means, in the case of an entity, for its governors and
 11 interest holders to take whatever steps are necessary under its organic rules, organic
 12 law, and other law to

13 (A) propose a transaction subject to this chapter;

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

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

18 (4) "business corporation" means a corporation whose internal affairs
 19 are governed by AS 10.06;

20 (5) "commissioner" means the commissioner of commerce,
 21 community, and economic development;

22 (6) "conversion" means a transaction authorized by AS 10.55.401 -
 23 10.55.406;

24 (7) "converted entity" means the converting entity as it continues in
 25 existence after a conversion;

26 (8) "converting entity" means the domestic entity that approves a plan
 27 of conversion under AS 10.55.403 or the foreign entity that approves a conversion
 28 under the law of its jurisdiction of organization;

29 (9) "department" means the Department of Commerce, Community,
 30 and Economic Development;

31 (10) "domesticated entity" means the domesticating entity as it

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continues in existence after a domestication;

(11) "domesticating entity" means the domestic entity that approves a plan of domestication under AS 10.55.503 or the foreign entity that approves a domestication under the law of its jurisdiction of organization;

(12) "domestication" means a transaction authorized by AS 10.55.501 - 10.55.506;

(13) "domestic entity" means an entity whose internal affairs are governed by the law of this state;

(14) "entity" means

(A) a business corporation;

(B) a nonprofit corporation;

(C) a general partnership, including a limited liability partnership;

(D) a limited partnership, including a limited liability limited partnership;

(E) a limited liability company;

(F) a business trust or statutory trust entity;

(G) an unincorporated nonprofit association;

(H) a cooperative; or

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

(i) an individual;

(ii) a testamentary, inter vivos, or charitable trust, with the exception of a trust that carries on a business;

(iii) an association or relationship that is not a partnership solely by reason of AS 32.06.202(c) (Uniform Partnership Act) or a similar provision of the law of any other jurisdiction;

(iv) a decedent's estate; or

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

(15) "filing entity" means an entity that is created by the filing of a

1 public organic document;

2 (16) "foreign entity" means an entity other than a domestic entity;

3 (17) "governance interest" means the right under the organic law or
4 organic rules of an entity, other than as a governor, agent, assignee, or proxy, to

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

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

8 (C) receive notice of or vote on any or all issues involving the
9 internal affairs of the entity;

10 (18) "governor" means a person by or under whose authority the
11 powers of an entity are exercised and under whose direction the business and affairs of
12 the entity are managed under the organic law and organic rules of the entity;

13 (19) "interest" means

14 (A) a governance interest in an unincorporated entity;

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

16 (C) a share or membership in a corporation;

17 (20) "interest exchange" means a transaction authorized by
18 AS 10.55.301 - 10.55.306;

19 (21) "interest holder" means a direct holder of an interest;

20 (22) "interest-holder liability" means

21 (A) personal liability for a liability of an entity that is imposed
22 on a person

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

25 (ii) by the organic rules of the entity under a provision
26 of the organic law authorizing the organic rules to make one or more
27 specified interest holders or categories of interest holders liable in their
28 capacity as interest holders for all or specified liabilities of the entity;
29 or

30 (B) an obligation of an interest holder under the organic rules
31 of an entity to contribute to the entity;

1 (23) "jurisdiction of organization" of an entity means the jurisdiction
2 whose law includes the organic law of the entity;

3 (24) "liability" means a debt, obligation, or any other liability arising
4 in any manner, regardless of whether it is secured or whether it is contingent;

5 (25) "merger" means a transaction in which two or more merging
6 entities are combined into a surviving entity under a filing with the department;

7 (26) "merging entity" means an entity that is a party to a merger and
8 exists immediately before the merger becomes effective;

9 (27) "nonprofit corporation" means a corporation whose internal
10 affairs are governed by AS 10.20 (Alaska Nonprofit Corporation Act);

11 (28) "organic law" means the statutes, if any, other than this chapter,
12 governing the internal affairs of an entity;

13 (29) "organic rules" means the public organic document and private
14 organic rules of an entity;

15 (30) "person" means an individual, corporation, estate, trust,
16 partnership, limited liability company, business or similar trust, association, joint
17 venture, public corporation, government or governmental subdivision, agency, or
18 instrumentality, or any other legal or commercial entity;

19 (31) "plan" means a plan of merger, interest exchange, conversion, or
20 domestication;

21 (32) "private organic rules" means the rules, whether or not in a record,
22 that govern the internal affairs of an entity, are binding on all of its interest holders,
23 and are not part of its public organic document, if any;

24 (33) "protected agreement" means

25 (A) a record evidencing indebtedness and any related
26 agreement in effect on July 1, 2014;

27 (B) an agreement that is binding on an entity on July 1, 2014;

28 (C) the organic rules of an entity in effect on July 1, 2014; or

29 (D) an agreement that is binding on any of the governors or
30 interest holders of an entity on July 1, 2014;

31 (34) "public organic document" means the public record, the filing of

1 which creates an entity, and any amendment to or restatement of that record;

2 (35) "qualified foreign entity" means a foreign entity that is authorized
3 to transact business in this state under a filing with the department;

4 (36) "record" means information that is inscribed on a tangible
5 medium or that is stored in an electronic or other medium and is retrievable in
6 perceivable form;

7 (37) "sign" means, with present intent to authenticate or adopt a
8 record,

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

10 (B) to attach to or logically associate with the record an
11 electronic sound, symbol, or process;

12 (38) "surviving entity" means the entity that continues in existence
13 after or is created by a merger;

14 (39) "transferable interest" means the right under an entity's organic
15 law to receive distributions from the entity;

16 (40) "type," with regard to an entity, means a generic form of entity

17 (A) recognized at common law; or

18 (B) organized under an organic law, whether or not some
19 entities organized under that organic law are subject to provisions of that law
20 that create different categories of the form of entity.

21 **Sec. 10.55.902. Short title.** This chapter may be cited as the Alaska Entity
22 Transactions Act.

23 * **Sec. 12.** AS 32.06.401(i) is amended to read:

24 (i) **Except as provided in AS 10.55 (Alaska Entity Transactions Act), a** [A]
25 person may become a partner only with the consent of all the partners.

26 * **Sec. 13.** AS 32.06.502 is amended to read:

27 **Sec. 32.06.502. Partner's transferable interest in partnership. Except as**
28 **provided in AS 10.55 (Alaska Entity Transactions Act), the** [THE] only
29 transferable interest of a partner in the partnership is the partner's share of the profits
30 and losses of the partnership and the partner's right to receive distributions. The
31 interest **of a partner, whether or not transferable,** is personal property.

1 * **Sec. 14.** AS 32.06.702(a) is amended to read:

2 (a) For two years after a partner dissociates without the dissociation resulting
3 in a dissolution and winding up of the partnership business, the partnership, including
4 a surviving partnership under AS 32.06.905 - 32.06.908 [AS 32.06.902 - 32.06.908],
5 is bound by an act of the dissociated partner that would have bound the partnership
6 under AS 32.06.301 before dissociation only if, at the time of entering into the
7 transaction, the other party

8 (1) reasonably believed that the dissociated partner was then a partner;

9 (2) did not have notice of the partner's dissociation; and

10 (3) is not considered to have had knowledge under AS 32.06.303(e) or
11 notice under AS 32.06.704(c).

12 * **Sec. 15.** AS 32.06.703(b) is amended to read:

13 (b) A partner who dissociates without the dissociation resulting in a
14 dissolution and winding up of the partnership business is liable as a partner to the
15 other party in a transaction entered into by the partnership, or a surviving partnership
16 under AS 32.06.905 - 32.06.908 [AS 32.06.902 - 32.06.908], within two years after
17 the partner's dissociation only if the partner is liable for the obligation under
18 AS 32.06.306 and, at the time of entering into the transaction, the other party

19 (1) reasonably believed that the dissociated partner was then a partner;

20 (2) did not have notice of the partner's dissociation; and

21 (3) is not considered to have had knowledge under AS 32.06.303(e) or
22 notice under AS 32.06.704(c).

23 * **Sec. 16.** AS 32.06.905(a) is amended to read:

24 (a) Under a plan of merger approved under (c) of this section, a partnership
25 may be merged with one or more partnerships [OR LIMITED PARTNERSHIPS].

26 * **Sec. 17.** AS 32.06.905(b) is amended to read:

27 (b) The plan of merger must state

28 (1) the name of each partnership [OR LIMITED PARTNERSHIP] that
29 is a party to the merger;

30 (2) the name of the surviving entity into which the other partnerships
31 [OR LIMITED PARTNERSHIPS] will merge;

1 (3) [WHETHER THE SURVIVING ENTITY IS A PARTNERSHIP
2 OR A LIMITED PARTNERSHIP AND THE STATUS OF EACH PARTNER;

3 (4) the terms and conditions of the merger;

4 (4) [(5)] the manner and basis of converting all or part of the interests
5 of each party to the merger into interests or obligations of the surviving entity or into
6 money or other property; and

7 (5) [(6)] the street address of the surviving entity's chief executive
8 office.

9 * **Sec. 18.** AS 32.06.905(c) is amended to read:

10 (c) The plan of merger must be approved

11 [(1) IN THE CASE OF A PARTNERSHIP THAT IS A PARTY TO
12 THE MERGER,] by all of the partners or a number or percentage specified for merger
13 in the partnership agreement [; AND

14 (2) IN THE CASE OF A LIMITED PARTNERSHIP THAT IS A
15 PARTY TO THE MERGER, BY THE VOTE REQUIRED FOR APPROVAL OF A
16 MERGER BY THE LAW OF THE STATE OR FOREIGN JURISDICTION WHERE
17 THE LIMITED PARTNERSHIP IS ORGANIZED AND, IN THE ABSENCE OF
18 SUCH A SPECIFICALLY APPLICABLE LAW, BY ALL OF THE PARTNERS,
19 NOTWITHSTANDING A PROVISION TO THE CONTRARY IN THE
20 PARTNERSHIP AGREEMENT].

21 * **Sec. 19.** AS 32.06.905 is amended by adding a new subsection to read:

22 (f) A merger in which a partnership and another form of entity are parties is
23 governed by AS 10.55 (Alaska Entity Transactions Act).

24 * **Sec. 20.** AS 32.06.906 is amended to read:

25 **Sec. 32.06.906. Effect of merger.** (a) When a merger takes effect,

26 (1) the separate existence of every partnership [OR LIMITED
27 PARTNERSHIP] that is a party to the merger, other than the surviving partnership
28 [ENTITY], ceases;

29 (2) all property owned by each of the merged partnerships [OR
30 LIMITED PARTNERSHIPS] vests in the surviving partnership [ENTITY];

31 (3) all obligations of every partnership [OR LIMITED

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PARTNERSHIP] that is a party to the merger become the obligations of the surviving partnership [ENTITY]; and

(4) an action or proceeding pending against a partnership [OR LIMITED PARTNERSHIP] that is a party to the merger may be continued as if the merger had not occurred, or the surviving partnership [ENTITY] may be substituted as a party to the action or proceeding.

(b) The commissioner is the agent for service of process in an action or proceeding against a surviving foreign partnership [OR LIMITED PARTNERSHIP] to enforce an obligation of a domestic partnership [OR LIMITED PARTNERSHIP] that is a party to a merger. The surviving partnership [ENTITY] shall promptly notify the department of the mailing address of its chief executive office and of any change of address. Upon receipt of process, the department shall mail a copy of the process to the surviving foreign partnership [OR LIMITED PARTNERSHIP].

(c) A partner of the surviving partnership [OR LIMITED PARTNERSHIP] is liable for

(1) all obligations of a party to the merger for which the partner was personally liable before the merger;

(2) all obligations of the surviving partnership [ENTITY] incurred before the merger by a party to the merger and not covered by (1) of this subsection, but the obligations under this paragraph may be satisfied only out of property of the surviving partnership [ENTITY]; and

(3) except as otherwise provided in AS 32.06.306, all obligations of the surviving partnership [ENTITY] incurred after the merger takes effect [, BUT THE OBLIGATIONS UNDER THIS PARAGRAPH MAY BE SATISFIED ONLY OUT OF PROPERTY OF THE ENTITY IF THE PARTNER IS A LIMITED PARTNER].

(d) If the obligations incurred before the merger by a party to the merger are not satisfied out of the property of the surviving partnership [OR LIMITED PARTNERSHIP], the general partners of the party to the merger immediately before the effective date of the merger shall contribute the amount necessary to satisfy the party's obligations to the surviving partnership [ENTITY,] in the manner provided in

1 AS 32.06.807 [, IN AS 32.11, OR IN THE LIMITED PARTNERSHIP LAW OF THE
2 JURISDICTION WHERE THE PARTY WAS FORMED, AS THE CASE MAY BE,]
3 as if the merged party were dissolved.

4 (e) As of the date the merger takes effect, a partner of a party to a merger who
5 does not become a partner of the surviving partnership [OR LIMITED
6 PARTNERSHIP] is dissociated from the entity of which that partner was a partner. A
7 [THE] surviving partnership [ENTITY SHALL CAUSE THE PARTNER'S
8 INTEREST IN THE ENTITY TO BE PURCHASED UNDER AS 32.06.701 OR
9 ANOTHER STATUTE SPECIFICALLY APPLICABLE TO THAT PARTNER'S
10 INTEREST WITH RESPECT TO A MERGER. THE SURVIVING ENTITY] is
11 bound under AS 32.06.702 by an act of a general partner dissociated under this
12 subsection, and the partner is liable under AS 32.06.703 for transactions entered into
13 by the surviving partnership [ENTITY] after the merger takes effect.

14 * **Sec. 21.** AS 32.06.907 is amended to read:

15 **Sec. 32.06.907. Statement of merger.** (a) After a merger, the surviving
16 partnership [OR LIMITED PARTNERSHIP] may file a statement that the parties to
17 the merger [ONE OR MORE PARTNERSHIPS OR LIMITED PARTNERSHIPS]
18 have merged into the surviving partnership [ENTITY].

19 (b) A statement of merger must contain

20 (1) the name of each partnership or limited partnership that is a party
21 to the merger;

22 (2) the name of the surviving partnership [ENTITY] into which the
23 other partnerships [OR LIMITED PARTNERSHIP] are merged; and

24 (3) the street address of the surviving partnership's [ENTITY'S] chief
25 executive office and of any office in this state [; AND

26 (4) WHETHER THE SURVIVING ENTITY IS A PARTNERSHIP
27 OR A LIMITED PARTNERSHIP].

28 (c) Except as otherwise provided in (d) of this section, in AS 32.06.302,
29 property of the surviving partnership [OR LIMITED PARTNERSHIP] that, before the
30 merger, was held in the name of another party to the merger is property held in the
31 name of the surviving partnership [ENTITY] upon filing a statement of merger.

1 (d) In AS 32.06.302, real property of the surviving partnership [OR LIMITED
2 PARTNERSHIP] that, before the merger, was held in the name of another party to the
3 merger is property held in the name of the surviving partnership [ENTITY] upon
4 recording a certified copy of the statement of merger in the office for recording
5 transfers of the real property.

6 (e) A filed and, if appropriate, recorded statement of merger, executed and
7 declared to be accurate under AS 32.06.970(c), stating the name of a partnership [OR
8 LIMITED PARTNERSHIP] that is a party to the merger in whose name property was
9 held before the merger and the name of the surviving partnership [ENTITY], but not
10 containing all of the other information required by (b) of this section, operates with
11 respect to the partnerships [OR LIMITED PARTNERSHIPS] named to the extent
12 provided in (c) and (d) of this section.

13 * **Sec. 22.** AS 32.06.908 is amended to read:

14 **Sec. 32.06.908. Nonexclusivity.** AS 32.06.905 - 32.06.907 [AS 32.06.902 -
15 32.06.908] are not exclusive. Partnerships or limited partnerships may enter into
16 mergers, interest exchanges, conversions, and domestications under AS 10.55
17 (Alaska Entity Transactions Act) [BE CONVERTED] or [MERGED] in any other
18 manner provided by law.

19 * **Sec. 23.** AS 32.06.995(7) is amended to read:

20 (7) "limited liability partnership" or "domestic limited liability
21 partnership" means a partnership that has filed a statement of qualification under
22 AS 32.06.911 and does not have a similar statement in effect in another jurisdiction;

23 * **Sec. 24.** AS 32.06.995 is amended by adding new paragraphs to read:

24 (17) "domestic partnership" means a partnership whose internal
25 relations are governed by the laws of this state;

26 (18) "foreign partnership" means a partnership other than a domestic
27 partnership;

28 (19) "surviving partnership" means a domestic or foreign partnership
29 into which one or more domestic or foreign partnerships are merged, whether or not
30 preexisting the merger or created by the merger.

31 * **Sec. 25.** AS 32.11.020 is amended by adding a new subsection to read:

1 (g) A certificate of limited partnership may also be amended by filing a plan
2 of merger, interest exchange, conversion, or domestication under AS 10.55 (Alaska
3 Entity Transactions Act).

4 * **Sec. 26.** AS 32.11.320 is amended to read:

5 **Sec. 32.11.320. Nature of partnership interest.** The [A PARTNERSHIP]
6 interest of a partner, whether or not transferable, is personal property.

7 * **Sec. 27.** AS 32.11.840(a) is amended to read:

8 (a) A limited partnership shall keep at the office referred to in
9 AS 32.11.830(a)(1) the following:

10 (1) a current list of the full name and last known business address of
11 each partner, separately identifying the general partners in alphabetical order and the
12 limited partners in alphabetical order;

13 (2) a copy of the certificate of limited partnership and all certificates of
14 amendment to it, together with executed copies of a power of attorney under which a
15 certificate has been executed;

16 (3) copies of the limited partnership's federal, state, and local income
17 tax returns and reports, if any, for the three most recent years;

18 (4) copies of a then effective written partnership agreement and of a
19 financial statement of the limited partnership for the three most recent years; [AND]

20 (5) unless contained in a written partnership agreement, a writing
21 setting out

22 (A) the amount of cash and a description and statement of the
23 agreed value of the other property or services contributed by each partner and
24 that each partner has agreed to contribute;

25 (B) the times at which or events on the happening of which
26 additional contributions agreed to be made by each partner are to be made;

27 (C) the right of a partner to receive, or of a general partner to
28 make, distributions to a partner that include a return of all or a part of the
29 partner's contribution; [AND]

30 (D) events upon the happening of which the limited partnership
31 is to be dissolved and its affairs wound up; and

1 **(6) a copy of any statement of merger, interest exchange,**
2 **conversion, or domestication filed under AS 10.55 (Alaska Entity Transactions**
3 **Act).**

4 * **Sec. 28.** AS 32.11.890 is amended to read:

5 **Sec. 32.11.890. Rules for [CONVERSIONS AND OTHER] cases not**
6 **covered by chapter.** In a case not provided for in this chapter, [INCLUDING
7 CONVERSION OF A LIMITED PARTNERSHIP TO A PARTNERSHIP,] the
8 provisions of AS 32.06 govern, **except as provided by AS 10.55 (Alaska Entity**
9 **Transactions Act).**

10 * **Sec. 29.** AS 32.11.900(9) is amended to read:

11 (9) "limited partnership," **except when used in the phrases "foreign**
12 **limited partnership" and "foreign limited liability limited partnership,"** and
13 "domestic limited partnership" mean a partnership formed by two or more persons
14 under **this chapter, or that becomes subject to this chapter,** [THE LAWS OF THIS
15 STATE] and having one or more general partners and one or more limited partners;

16 * **Sec. 30.** AS 06.26.670; AS 10.06.590; AS 10.15.450; AS 10.50.505, 10.50.570;
17 AS 32.06.902, 32.06.903, 32.06.904, 32.06.909; and AS 32.11.095 are repealed.

18 * **Sec. 31.** The uncodified law of the State of Alaska is amended by adding a new section to
19 read:

20 INDIRECT COURT RULE AMENDMENTS. (a) AS 10.55.603(a), added by sec. 11
21 of this Act, amends Rule 79, Alaska Rules of Civil Procedure, by directing that the process
22 service fee be allowed to a prevailing party, whether or not the fee amount exceeds the
23 amount allowed by Rule 11, Alaska Rules of Administration.

24 (b) AS 10.55.607(a), added by sec. 11 of this Act, amends Rule 602(b)(2), Alaska
25 Rules of Appellate Procedure, by establishing special venue rules for appealing the refusal of
26 the Department of Commerce, Community, and Economic Development to file a document.

27 (c) AS 10.55.607(a), added by sec. 11 of this Act, amends Rule 602(c), Alaska Rules
28 of Appellate Procedure, by requiring that certain documents be filed with a petition appealing
29 the refusal of the Department of Commerce, Community, and Economic Development to file
30 a document.

31 (d) AS 10.55.607(b), added by sec. 11 of this Act, amends Rule 605.5, Alaska Rules

1 of Appellate Procedure, by allowing the superior court to summarily order the filing, because
2 a summary order may not allow for oral argument.

3 * **Sec. 32.** The uncodified law of the State of Alaska is amended by adding a new section to
4 read:

5 TRANSITION: REGULATIONS. The Department of Commerce, Community, and
6 Economic Development may adopt regulations necessary to implement the changes made by
7 this Act. The regulations take effect under AS 44.62 (Administrative Procedure Act), but not
8 before July 1, 2014.

9 * **Sec. 33.** The uncodified law of the State of Alaska is amended by adding a new section to
10 read:

11 SAVING CLAUSE. This Act does not affect an action or proceeding begun or a right
12 accrued before July 1, 2014.

13 * **Sec. 34.** Section 32 of this Act takes effect immediately under AS 01.10.070(c).

14 * **Sec. 35.** Except as provided in sec. 34 of this Act, this Act takes effect July 1, 2014.

**Representative
Lindsey Holmes**

Capitol Room 415
465-4919
465-2137 fax



MEMORANDUM

Date: 20 February 2013

To: Chair Wes Keller,
House Judiciary Committee

From: Representative Lindsey Holmes

RE: Hearing Request for HB 57: Entity Transaction Act

I would like to respectfully request a hearing for House Bill 57 in the House Judiciary Committee. If you have any questions about the bill, please feel free to contact me or my aide James R. Waldo (his direct line is 465.8186).

Attached to this memo is:

- 1) A copy of the bill in its current form;
- 2) A sponsor statement for the bill;
- 3) A sectional summary for the bill produced by my office;
- 4) A copy of the Uniform Law Commission's summary of the uniform act;
- 5) The committee should expect possible testimony from:
 - a. The Department of Commerce, Community, and Economic Development.



Representative Lindsey Holmes

Sponsor Statement

HB 57 – Entity Transactions Act

House Bill 57 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. House Bill 57 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 HB 57 will be an important step towards bringing Alaska more into the mainstream of statutory business law.

I urge your support of this legislation.



Representative Lindsey Holmes

Sectional Summary

HB 57 – Entity Transactions Act

Here is a sectional summary of HB 57, the Entity Transactions Act prepared by my office. Please keep in mind that this summary is for informational purposes and the bill itself is the most authoritative interpretation 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 06.26.670 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.



Uniform Law Commission

The National Conference of Commissioners on Uniform State Laws

Contact Us: 312.450.6600

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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