



ARIZONA STATE SENATE
Fifty-First Legislature, Second Regular Session

FACT SHEET FOR S.B. 1353

restructuring; Arizona entities

Purpose

Revises, modifies and adds stipulations allowing corporations and partnerships to participate in mergers, interest exchanges, conversions, domestications and divisions.

Background

Article 15 of the Arizona Constitution establishes the Arizona Corporation Commission (ACC). The ACC staff is organized into six divisions: Administration, Hearings, Utilities, Securities, Corporations and Legal. The Corporations Division approves all articles of incorporation for Arizona businesses. The Corporate Filings Section (Section) approves and processes all filings directly related to articles of incorporation and organization. The Section also determines availability of corporate names, processes applications filed by foreign corporations seeking authority to transact business in Arizona and certifies copies of any and all corporate documents on file for introduction into court and private business transactions.

The Secretary of State, among other responsibilities, is responsible for recordings and filings under the Uniform Commercial Code; registering trade names, trademarks and limited partnerships; appointing notaries public; and certifying certain telemarketing organizations.

The fiscal impact of this legislation, if any, is unknown.

Provisions

Required notice of approval

1. Requires a domestic or foreign entity to give notice or obtain approval in order to be a party to an interest exchange, conversion, domestication or division, unless provided otherwise by law, if required to give notice to or obtain the approval of a governmental agency or officer in order to be a party to a merger.
2. Prohibits property, held for a charitable purpose by a domestic or foreign entity immediately before a transaction becomes effective, from being diverted from the objects for which it was donated, granted or devised unless the entity obtains an appropriate order of a court of competent jurisdiction specifying the disposition of the property.

Status of filing

3. Stipulates that a filing that is signed by a domestic entity becomes part of the public organizational document of the entity, if the entity's governing statute provides that similar

filings under the governing statute become part of the public organizational document of the entity.

4. Specifies that the fact that a transaction produces a result does not preclude the same result from being accomplished in any other manner permitted by law.
5. Allows a plan to refer to facts that are ascertainable outside of the plan, if the manner in which the facts will operate is specified. Allows the facts to include the occurrence of an event or a determination or action by a person, whether or not the event, determination or action is within the control of a party to the transaction.
6. Specifies that approval of a transaction by the unanimous vote or consent of its interest holders satisfies the requirements of approval, unless otherwise provided in the governing statute or organizational documents.
7. Entitles an interest holder of a domestic merging, acquired, converting, domesticating or dividing entity to:
 - a) appraisal rights in connection with the transaction if the interest holder would have been entitled to appraisal rights under the entity's governing statute in connection with a merger, in which the interest of the interest holder was changed, converted or exchanged. Specifies that this does not apply if the governing statute permits the organizational documents to limit the availability of appraisal rights; and
 - b) contractual appraisal rights in connection with a transaction to the extent provided by the entity's organizational documents, plan or action of the entity's governors. If the governing statute does not provide procedures for the conduct of an appraisal rights proceeding, state law applies to the extent practicable or as otherwise provided for in the documents or plan.

Recording of statements

8. Allows, after approval for filing by the appropriate filing authority, a certified copy of the statement of merger, interest exchange, conversion, domestication or division to be recorded with the county recorder.
9. Authorizes the county recorder to accept the statement and stipulates that an affidavit of value is not necessary. Requires the county recorder to index the statement in the same manner as other recordings.
10. Stipulates that the statement, on recordation, is *prima facie* evidence of any transfer or any real property that occurs on the effectiveness of the transactions described in the statement.
11. Allows the statement to be accompanied by instructions to the assessor to transmit tax billings for any real property affected to a specified recipient.

Merger

12. Authorizes one or more domestic entities to merge with one or more domestic or foreign entities if complying with requirements.

13. Allows a foreign entity to be a merging entity in a merger or the surviving entity if the merger is authorized by the law of the foreign entity's jurisdiction of organization.
14. Allows a domestic entity to become a merging entity in a merger by approving a plan of merger. Outlines plan of merger requirements and allows them to contain any other provisions not prohibited by law.
15. Stipulates that a plan of merger is not effective unless it has been approved both by a domestic merging entity and in a record by each interest holder of a domestic merging entity that will have interest holder liability for obligations that arise after the merger becomes effective. Specifies exceptions.
16. Stipulates that a merger involving a foreign entity is not effective unless it is approved by the foreign entity in accordance with the law of the foreign entity's jurisdiction of organization.
17. Allows a plan of merger of a domestic merging entity to be amended either in the same manner as the plan was approved, if the plan does not provide the manner to amend, or by the governors or interest holders of the entity in the manner provided for in the plan. Specifies exceptions.
18. Allows a plan to be abandoned by the domestic merging entity, after a plan of merger has been approved and before it becomes effective, subject to any contractual rights as provided in the plan or, if not provided, by the governors of the domestic merging entity or in the same manner as the plan was approved.
19. Allows a plan of merger to be abandoned if a statement has been delivered for filing with the appropriate filing authority only if the statement sets forth a delayed effective date. Allows the abandonment by delivering on or before the delayed effective date a statement of abandonment with the appropriate filing authority, signed on behalf of each merging entity.
20. Specifies that the merger is abandoned on the delivery of the statement of abandonment for filing. Outlines statement requirements.
21. Requires a statement of merger to be signed on behalf of each merging entity.
22. Requires a statement of merger to be delivered for filing:
 - a) with the appropriate filing authority, if any, for the domestic *surviving* entity and with a different filing authority if there is a different filing authority; or
 - b) with the appropriate filing authority, if any, and with a different filing authority for any other domestic *merging* entity if necessary.
23. Outlines requirements for statement of merger content. Allows a statement of merger to contain any other provision not prohibited by law.
24. Requires the amendment or organizational document filed with the statement of merger, if the surviving entity is a domestic filing entity, to satisfy statutory requirements and be

deemed signed by means of the signing of the statement of the merger. Allows any provision that is not required to be included in a restatement of the public organizational document to be omitted.

25. Allows a plan of merger that is signed on behalf of all the merging entities to be delivered for filing with the appropriate filing authority instead of a statement of merger if the surviving entity or at least one merging entity is a domestic filing entity, as provided by the plan. Prescribes that the plan has the same effect as a statement of merger if neither the surviving entity nor any merging entity is a domestic filing entity, as provided by the plan.
26. Deems the statement of merger to have become effective on the date and time of the delivery for filing with the appropriate filing authority or authorities if the surviving entity or at least one merging entity is a domestic filing entity and the statement of merger has been approved for filing. If applicable, the statement of merger is effective if a later date and time is specified in the statement.
27. Stipulates that a statement of merger and the merger are effective on the signing of the statement, or as specified in the statement, if neither the surviving entity nor any merging entity is a domestic filing entity.
28. Specifies that when a merger becomes effective:
 - a) the surviving entity continues or comes into existence;
 - b) each merging entity that is not the surviving entity ceases to exist as a separate entity;
 - c) all property, including rights, privileges, immunities and powers of each merging entity automatically vests in the surviving entity without assignment, reversion or impairment;
 - d) all obligations of each merging entity are automatically obligations of the surviving entity without assignment, assumption or delegation;
 - e) all of its property, including rights, privileges, immunities and powers, remain vested in the surviving entity without assignment, reversion or impairment and it remain subject to all of its obligations if the surviving entity exists before the merger;
 - f) any pending action or proceeding involving any merging entity continues and the name of the surviving entity may be substituted for the name of the merging entity;
 - g) the public organizational document or private organizational document, if any, is amended if and to the extent provided in the statement of merger if the surviving entity exists before the merger; and
 - h) 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 under a plan or merger and to any appraisal rights under the merging entity's governing statute.
29. Stipulates that the merger does not give rise to any rights that an interest holder, governor or third party would otherwise have on a dissolution, liquidation or winding up of the merging entity, unless provided in the plan of merger, governing statute or organizational documents.
30. Specifies that 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 the domestic surviving entity as a result of the merger, has interest holder liability only to the extent provided by the governing statute or organizational documents of the domestic

surviving entity, and then, only for those obligations that arise after the merger becomes effective.

31. Outlines stipulations concerning 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.
32. Stipulates that, when a merger becomes effective, a foreign entity that is a surviving entity may be served with process in this state for the collection and enforcement of any obligations of a domestic merging entity, including obligations arising out of the exercise of appraisal rights. Specifies that if the foreign entity is not qualified, the foreign entity appoints the appropriate filing authority as its agent for service of process for collecting or enforcing those obligations.
33. Revokes or cancels, automatically, the authority, registration or other qualification granted by the appropriate filing authority to transact business or conduct affairs in this state of any foreign merging entity that is not the surviving entity when a merger becomes effective.
34. Declares a merger ineffective if a statement of merger is filed with the appropriate filing authority and the merger is not authorized by the law of the relevant foreign jurisdiction.
35. Requires a statement of ineffectiveness of merger to be signed on behalf of each entity on behalf of which the statement of merger was signed and delivered for filing with the appropriate filing authority to reflect the ineffectiveness in the public record.
36. Outlines the content of a statement of ineffectiveness of merger.
37. Stipulates that the entities that attempted the merger are:
 - a) responsible to any other person for any obligation incurred by that person that arises out of or relates to the ineffectiveness of the attempted merger, unless the entities establish that the obligation was not incurred in good faith; and
 - b) deemed to have appointed the appropriate filing authority as the agent of each entity for service of process for any action arising, unless the entity is a domestic or a qualified foreign entity.
38. Specifies that the entities that attempted the merger and their respective interest holders, governors or other representatives are not civilly or criminally liable if they were acting in good faith and are prohibited from being found guilty in connection with an ineffective merger in certain situations.

Interest Exchange

39. Authorizes a domestic entity to acquire all of one or more classes, series or groups of interests of another domestic or foreign entity in exchange for interests, securities, obligations, rights to acquire interest or securities, cash or other property.

40. Allows all of one or more classes, series or groups of interests of a domestic entity to be acquired by another domestic or foreign entity in exchange for interests, securities, obligations, rights to acquire interests or securities, cash or other property.
41. Allows a foreign entity to be an acquiring or acquired entity in an interest exchange if the interest exchange is authorized by the law of the foreign entity's jurisdiction of organization.
42. Stipulates that, if a protected agreement contains a provision that applies to a merger of a domestic entity but does not refer to an interest exchange, the provision applies to an interest exchange in which the domestic entity is the acquired entity as if the interest exchange were a merger.
43. Allows a domestic entity to be the acquired entity in an interest exchange by approving a plan of interest exchange. Outlines plan requirements and allows the plan to contain any other provisions not prohibited by law.
44. Stipulates that a plan of interest exchange is not effective unless it has been approved by both a domestic acquired entity, as authorized, and in a record by each interest holder of a domestic acquired entity that will have interest holder liability for obligations that arise after the interest exchange becomes effective. Lists exceptions.
45. Designates an interest exchange involving a foreign entity as not effective, unless it is approved by the foreign entity in accordance with the law of the foreign entity's jurisdiction of organization.
46. Specifies that the interest holders of the acquired entity are not required to approve the interest exchange except as otherwise provided in its governing statute or organizational documents.
47. Stipulates that a provision of the governing statute of a domestic acquired entity that would permit a merger between the acquired entity and the acquiring entity to be approved without the vote or consent of the interest holders of the acquired entity, because of the percentage of interests in the acquired entity held by the acquiring entity, does not apply to approval of an interest exchange in a specified situation.
48. Permits a plan of interest exchange of a domestic acquired entity to be amended either in the same manner as the plan was approved, if the plan does not provide for the manner to amend, or by the governors or interest holders of the entity in the manner provided in the plan. Specifies exceptions.
49. Allows a plan to be abandoned by the domestic acquired entity, after a plan of interest exchange has been approved and before it becomes effective, subject to any contractual rights as provided in the plan or, if not provided, by the governors of the domestic acquired entity or in the same manner as the plan was approved.
50. Allows a plan of interest exchange to be abandoned if a statement has been delivered for filing with the appropriate filing authority only if the statement sets forth a delayed

effective date. Allows the abandonment by delivering on or before the delayed effective date a statement of abandonment with the appropriate filing authority, signed on behalf of the domestic acquired entity.

51. Specifies that the interest exchange is abandoned and not effective on the delivery of the statement of abandonment for filing. Outlines statement requirements.
52. Requires a statement of interest exchange to be signed on behalf of a domestic acquired entity.
53. Requires a statement of interest exchange to be delivered for filing with the appropriate filing authority, if any, for the domestic acquired entity.
54. Outlines requirements for statement of interest exchange content. Allows a statement of interest exchange to contain any other provision not prohibited by law.
55. Requires any amendment filed with the statement of interest exchange to satisfy statutory requirements and be deemed signed by means of the signing of the statement. Allows any provision that is not required to be included in a restatement of the public organizational document of the domestic acquired entity to be omitted.
56. Allows a plan of interest exchange that is signed on behalf of the domestic acquired entity to be delivered for filing with the appropriate filing authority instead of a statement of interest exchange if the domestic acquired entity is a domestic filing entity, as provided by the plan. Prescribes that the plan has the same effect as a statement of interest exchange if the domestic acquired entity is not a domestic filing entity, as provided by the plan.
57. Deems the statement of interest exchange and interest exchange to have become effective on the date and time of the delivery for filing with the appropriate filing authority or authorities if the domestic acquired entity is a domestic filing entity and the statement of interest exchange has been approved for filing. If applicable, the statement of interest exchange is effective if a later date and time is specified in the statement.
58. Stipulates that a statement of interest exchange and the interest exchange are effective on the signing of the statement, or as specified in the statement, if a domestic acquired entity is a domestic filing entity.
59. Specifies that when an interest exchange becomes effective:
 - a) the interests in the acquired entity that are the subject of the interest exchange cease to exist or are converted or exchanged as provided in the plan of interest exchange and the interest holders of those interests are entitled only to the rights provided to them under the plan and to any appraisal rights they have and the governing statute;
 - b) the acquiring entity becomes the interest holder of the interests in the acquired entity as provided in the plan;
 - c) the public organizational document, if any, of the acquired entity is amended if and to the extent provided in the statement; and
 - d) the private organizational documents of the acquired entity that are to be in a record, if any, are amended if and to the extent provided in the plan.

60. Stipulates that the interest exchange does not give rise to any rights that an interest holder, governor or third party would otherwise have on a dissolution, liquidation or winding up of the acquired entity, unless provided in the plan of interest exchange, governing statute or organizational documents.
61. Specifies that a person that did not have interest holder liability with respect to the acquired entity, and that becomes subject to interest holder liability with respect to the domestic acquiring entity as a result of the interest exchange, has interest holder liability only to the extent provided by the governing statute or organizational documents of the domestic acquiring entity, and then, only for those obligations that arise after the interest exchange becomes effective.
62. Outlines stipulations concerning the interest holder liability of a person that ceases to hold an interest in a domestic acquired entity with respect to which the person had interest holder liability.
63. Declares an interest exchange ineffective if a statement of interest exchange is filed with the appropriate filing authority and the interest exchange is not authorized by the law of the relevant foreign jurisdiction.
64. Requires a statement of ineffectiveness of interest exchange to be signed on behalf of the domestic acquired entity on behalf of which the statement of interest exchange was signed and delivered for filing with the appropriate filing authority to reflect the ineffectiveness in the public record.
65. Outlines the content of a statement of ineffectiveness of interest exchange.
66. Stipulates that the domestic acquired entity that attempted the interest exchange is responsible to any other person for any obligation incurred by that person that arises out of or relates to the ineffectiveness of the attempted interest exchange, unless the entity establishes that the obligation was not incurred in good faith.
67. Specifies that the domestic acquired entity that attempted the interest exchange and its respective interest holders, governors or other representatives are not civilly or criminally liable if they were acting in good faith and are prohibited from being found guilty in connection with an ineffective interest exchange in certain situations.

Conversion

68. Authorizes a domestic entity to become either a domestic entity of a different type or a foreign entity of a different type if the conversion is authorized by the law of the foreign jurisdiction.
69. Allows a foreign entity to become a domestic entity of a different type if the conversion is authorized by the law of the foreign entity's jurisdiction.

70. Stipulates that, if a protected agreement contains a provision that applies to a merger of a domestic entity but does not refer to a conversion, the provision applies to a conversion of the entity as if the conversion were a merger until the agreement is amended.
71. Allows a domestic entity to convert to a different type of entity by approving a plan of conversion. Outlines plan requirements and allows the plan to contain any other provisions not prohibited by law.
72. Stipulates that a plan of conversion is not effective unless it has been approved both by a domestic converting entity and in a record by each interest holder of a domestic converting entity that will have interest holder liability for obligations that arise after the conversion becomes effective. Specifies exceptions.
73. Designates a conversion involving a foreign entity as not effective, unless it is approved by the foreign entity in accordance with the law of the foreign entity's jurisdiction of organization.
74. Permits a plan of conversion of a domestic converting entity to be amended either in the same manner as the plan was approved, if the plan does not provide for the manner to amend, or by the governors or interest holders of the entity in the manner provided in the plan. Specifies exceptions.
75. Allows a plan to be abandoned by the domestic converting entity, after a plan of conversion has been approved and before it becomes effective, subject to any contractual rights as provided in the plan or, if not provided, by the governors of the domestic converting entity or in the same manner as the plan was approved.
76. Allows a plan of conversion to be abandoned if a statement has been delivered for filing with the appropriate filing authority only if the statement sets forth a delayed effective date. Allows the abandonment by delivering on or before the delayed effective date a statement of abandonment with the appropriate filing authority, signed on behalf of the domestic converting entity.
77. Specifies that the conversion is abandoned and not effective on the delivery of the statement of abandonment for filing. Outlines statement requirements.
78. Requires a statement of conversion to be signed on behalf of the converting entity.
79. Requires a statement of conversion to be delivered for filing:
 - a) with the appropriate filing authority, if any, for the domestic *converting* entity and, if there is a different filing authority for the domestic *converted* entity, with the different filing authority;
 - b) with the appropriate filing authority, if any, in the case of a domestic entity converting into a foreign entity of a different type; or
 - c) with the appropriate filing authority, if any, in the case of a foreign entity converting into a domestic entity.

80. Outlines requirements for statement of conversion content. Allows a statement of conversion to contain any other provision not prohibited by law.
81. Requires the organizational document filed with the statement of conversion, if the converted entity is a domestic filing entity, to satisfy statutory requirements and be deemed signed by means of the signing of the statement of conversion. Allows any provision that is not required to be included in a restatement of the public organizational document to be omitted.
82. Allows a plan of conversion that is signed on behalf of the domestic converting entity to be delivered for filing with the appropriate filing authority instead of a statement of conversion if the domestic converted entity or domestic converting entity is a domestic filing entity, as provided by the plan. Prescribes that the plan has the same effect as a statement of conversion if the domestic converted entity or domestic converting entity is not a domestic filing entity, as provided by the plan.
83. Deems the statement of conversion to have become effective on the date and time of the delivery for filing with the appropriate filing authority or authorities if the converting entity or converted entity is a domestic filing entity and the statement of conversion has been approved for filing. If applicable, the statement of conversion is effective if a later date and time is specified in the statement.
84. Specifies that when a conversion becomes effective:
 - a) the converted entity is both organized under and subject to the governing statute of the converted entity and the same entity without interruption as the converting entity;
 - b) all property, including rights, privileges, immunities and powers, of the converting entity remains vested in the converted entity without assignment, reversion or impairment;
 - c) all obligations of the converting entity continue as obligations of the converted entity;
 - d) all of the rights, privileges, immunities, powers and purposes of the converting entity remain in the converted entity, unless otherwise provided;
 - e) the name of the converted entity may be substituted for the name of the converting entity in any pending action or proceeding;
 - f) the organizational document is effective and binding on its interest holders if the converted entity is a domestic filing entity;
 - g) the statement of qualification is effective simultaneously if the converted entity is a domestic limited liability partnership;
 - h) the documents it filed to become a qualified foreign entity are effective simultaneously if the converted entity is to be a qualified foreign entity;
 - i) the private organizational documents of the converted entity that are to be in a record, if any, approved as part of the plan of conversion are effective and binding; and
 - j) the interests in the converting entity are converted and the interest holders of the converting entity are entitled only to the rights provided to them under the plan of conversion and to any appraisal rights they have and the converting entity's governing statute.
85. Stipulates that the conversion does not give rise to any rights that an interest holder, governor or third party would otherwise have on a dissolution, liquidation or winding up of

the converting entity, unless provided in the plan of conversion, governing statute or organizational documents.

86. Specifies that a person that did not have interest holder liability with respect to the converting entity, and that becomes subject to interest holder liability with respect to the domestic converted entity as a result of the conversion, has interest holder liability only to the extent provided by the governing statute or organizational documents of the domestic converted entity, and then, only for those obligations that arise after the conversion becomes effective.
87. Outlines stipulations concerning the interest holder liability of a person that ceases to hold an interest in a domestic converting entity with respect to which the person had interest holder liability.
88. Stipulates that, when a conversion becomes effective, a foreign entity that is the converted entity may be served with process in this state for the collection and enforcement of any obligations that arise before the conversion becomes effective, including obligations arising out of the exercise of appraisal rights. Specifies that if the foreign entity is not qualified, the foreign entity appoints the appropriate filing authority as its agent for service of process for collecting or enforcing those obligations.
89. Revokes or cancels, automatically, the authority, registration or other qualification granted by the appropriate filing authority to transact business or conduct affairs in this state for a converting entity that is a qualified foreign entity when the conversion becomes effective.
90. Specifies that a conversion does not require the entity to wind up its affairs and does not constitute or cause the dissolution of the entity.
91. Declares a conversion ineffective if a statement of conversion is filed with the appropriate filing authority and the conversion is not authorized by the law of the relevant foreign jurisdiction.
92. Requires a statement of ineffectiveness of conversion to be signed on behalf of the entity on behalf of which the statement of conversion was signed and delivered for filing with the appropriate filing authority to reflect the ineffectiveness in the public record.
93. Outlines the content of a statement of ineffectiveness of conversion.
94. Stipulates that the entity that attempted the conversion is:
 - a) responsible to any other person for any obligation incurred by that person that arises out of or relates to the ineffectiveness of the attempted conversion, unless the entity establishes that the obligation was not incurred in good faith; and
 - b) deemed to have appointed the appropriate filing authority as its agent for service of process for any action arising, unless the entity is a domestic or a qualified foreign entity.
95. Specifies that the entity that attempted the conversion and their respective interest holders, governors or other representatives are not civilly or criminally liable if they were acting in

good faith and are prohibited from being found guilty in connection with an ineffective conversion in certain situations.

Domestication

96. Authorizes a domestic entity to become a domestic entity of the same type in a foreign jurisdiction if the domestication is authorized by the law of the foreign jurisdiction.
97. Allows a foreign entity to become a domestic entity of the same type in Arizona if the domestication is authorized by the law of the foreign entity's jurisdiction of organization.
98. Stipulates that, if a protected agreement contains a provision that applies to a merger of a domestic entity but does not refer to a domestication, the provision applies to a domestication of the entity as if the domestication were a merger until the agreement is amended.
99. Allows a domestic entity to become a foreign entity by approving a plan of domestication. Outlines plan requirements and allows the plan to contain any other provisions not prohibited by law.
100. Stipulates that a plan of domestication is not effective unless it has been approved both by a domestic domesticating entity and in a record by each interest holder of a domestic domesticating entity that will have interest holder liability for obligations that arise after the domestication becomes effective. Specifies exceptions.
101. Designates a domestication involving a foreign domesticating entity as not effective, unless it is approved by the foreign entity in accordance with the law of the foreign entity's jurisdiction of organization.
102. Permits a plan of domestication of a domestic domesticating entity to be amended either in the same manner as the plan was approved, if the plan does not provide for the manner to amend, or by the governors or interest holders of the entity in the manner provided in the plan. Specifies exceptions.
103. Allows a plan to be abandoned by the domestic domesticating entity, after a plan of domestication has been approved and before it becomes effective, subject to any contractual rights as provided in the plan or, if not provided, by the governors of the domestic domesticating entity or in the same manner as the plan was approved.
104. Allows a plan of domestication to be abandoned if a statement has been delivered for filing with the appropriate filing authority only if the statement sets forth a delayed effective date. Allows the abandonment by delivering on or before the delayed effective date a statement of abandonment with the appropriate filing authority, signed on behalf of the domestic domesticating entity.
105. Specifies that the domestication is abandoned and not effective on the delivery of the statement of abandonment for filing. Outlines statement requirements.

106. Requires a statement of domestication to be signed on behalf of the domesticating entity.
107. Requires a statement of domestication to be delivered for filing:
 - a) with the appropriate filing authority, if any, in the case of a domestic entity becoming into a domestic entity of the same type in a foreign jurisdiction; or
 - b) with the appropriate filing authority, if any, in the case of a foreign entity becoming a domestic entity of the same type.
108. Outlines requirements for statement of domestication content. Allows a statement of domestication to contain any other provision not prohibited by law.
109. Requires the public organizational document filed with the statement of domestication, if the domesticated entity is a domestic filing entity, to satisfy statutory requirements and be deemed signed by means of the signing of the statement of domestication. Allows any provision that is not required to be included in a restatement of the public organizational document to be omitted.
110. Allows a plan of domestication that is signed on behalf of a domestic domesticating entity to be delivered for filing with the appropriate filing authority instead of a statement of domestication if the domestic domesticated entity or domestic domesticating entity is a domestic filing entity, as provided by the plan. Prescribes that the plan has the same effect as a statement of domestication if the domestic domesticated entity or domestic domesticating entity is not a domestic filing entity, as provided by the plan.
111. Deems the statement of domestication to have become effective on the date and time of the delivery for filing with the appropriate filing authority or authorities if the domesticating entity or domesticated entity is a domestic filing entity and the statement of domestication has been approved for filing. If applicable, the statement of domestication is effective if a later date and time is specified in the statement.
112. Stipulates that both the domestication and the statement of domestication are effective on the signing of the statement of domestication or, if applicable, at a later date and time as specified in the statement, if neither the domesticating entity nor the domesticated entity are a domestic filing entity.
113. Specifies that when a domestication becomes effective:
 - a) the domesticated entity is both organized under and subject to the governing statute of the domesticated entity and the same entity without interruption as the domesticating entity;
 - b) all property, including rights, privileges, immunities and powers, of the domesticating entity remains vested in the domesticated entity without assignment, reversion or impairment;
 - c) all obligations of the domesticating entity continue as obligations of the domesticated entity;
 - d) all of the rights, privileges, immunities, powers and purposes of the domesticating entity remain in the domesticated entity, unless otherwise provided;
 - e) the name of the domesticated entity may be substituted for the name of the domesticating entity in any pending action or proceeding;

- f) the public organizational document is effective and binding on its interest holders if the domesticated entity is a domestic filing entity;
 - g) the statement of qualification is effective simultaneously if the domesticated entity is a domestic limited liability partnership;
 - h) the documents it filed to become a qualified foreign entity are effective simultaneously if the domesticated entity is to be a qualified foreign entity;
 - i) the private organizational documents of the domesticated entity that are to be in a record, if any, approved as part of the plan of domestication are effective and binding; and
 - j) the interests in the domesticating entity are converted and the interest holders of the domesticating entity are entitled only to the rights provided to them under the plan of domestication and to any appraisal rights they have under the domesticating entity's governing statute.
114. Stipulates that the domestication does not give rise to any rights that an interest holder, governor or third party would otherwise have on a dissolution, liquidation or winding up of the domesticating entity, unless provided in the plan of domestication, governing statute or organizational documents.
115. Specifies that a person that did not have interest holder liability with respect to the domesticating entity, and that becomes subject to interest holder liability with respect to the domestic domesticated entity as a result of the domestication, has interest holder liability only to the extent provided by the governing statute or organizational documents of the domestic domesticated entity, and then, only for those obligations that arise after the domestication becomes effective.
116. Outlines stipulations concerning the interest holder liability of a person that ceases to hold an interest in a domestic domesticating entity with respect to which the person had interest holder liability.
117. Stipulates that, when a domestication becomes effective, a foreign entity that is the domesticated entity may be served with process in this state for the collection and enforcement of any obligations that arise before the domestication becomes effective, including obligations arising out of the exercise of appraisal rights. Specifies that if the foreign entity is not qualified, the foreign entity appoints the appropriate filing authority as its agent for service of process for collecting or enforcing those obligations.
118. Revokes or cancels, automatically, the authority, registration or other qualification granted by the appropriate filing authority to transact business or conduct affairs in this state of a domesticating entity that is a qualified foreign entity when the domestication becomes effective.
119. Specifies that a domestication does not require the entity to wind up its affairs and does not constitute or cause the dissolution of the entity.
120. Declares a domestication ineffective if a statement of domestication is filed with the appropriate filing authority and the domestication is not authorized by the law of the relevant foreign jurisdiction.

121. Requires a statement of ineffectiveness of domestication to be signed on behalf of the entity on behalf of which the statement of domestication was signed and delivered for filing with the appropriate filing authority to reflect the ineffectiveness in the public record.
122. Outlines the content of a statement of ineffectiveness of domestication.
123. Stipulates that the entity that attempted the domestication is:
 - a) responsible to any other person for any obligation incurred by that person that arises out of or relates to the ineffectiveness of the attempted domestication, unless the entity establishes that the obligation was not incurred in good faith; and
 - b) deemed to have appointed the appropriate filing authority as its agent for service of process for any action arising, unless the entity is a domestic or a qualified foreign entity.
124. Specifies that the entity that attempted the domestication and their respective interest holders, governors or other representatives are not civilly or criminally liable if they were acting in good faith and are prohibited from being found guilty in connection with an ineffective domestication in certain situations.
125. Defines *domestic entity*.

Divisions

126. Authorizes a domestic entity to divide into the dividing entity and one or more new entities or two or more entities, whether domestic or foreign.
127. Allows a foreign entity to be created by the division of a domestic entity if the division is authorized by the law of the foreign entity's jurisdiction of organization.
128. Allows a domestic entity to be created by the division of a foreign entity if the division is authorized by the law of the foreign entity's jurisdiction of organization.
129. Stipulates that, if a protected agreement contains a provision that applies to a merger of a domestic entity but does not refer to a division, the provision applies to a division of the entity as if the division were a merger until the agreement is amended.
130. Allows a domestic entity to divide by approving a plan of division. Outlines plan requirements and allows the plan to contain any other provisions not prohibited by law.
131. Stipulates that a plan of division is not effective unless it has been approved both by a domestic dividing entity and in a record by each interest holder of a domestic dividing entity that will have interest holder liability for obligations that arise after the division becomes effective. Specifies exceptions.

132. Designates a division involving a foreign entity as not effective, unless it is approved by the foreign entity in accordance with the law of the foreign entity's jurisdiction of organization.
133. Permits a plan of division of a domestic dividing entity to be amended either in the same manner as the plan was approved, if the plan does not provide for the manner to amend, or by the governors or interest holders of the entity in the manner provided in the plan. Specifies exceptions.
134. Allows a plan to be abandoned by the domestic dividing entity, after a plan of division has been approved and before it becomes effective, subject to any contractual rights as provided in the plan or, if not provided, by the governors of the domestic dividing entity or in the same manner as the plan was approved.
135. Allows a plan of division to be abandoned if a statement has been delivered for filing with the appropriate filing authority only if the statement sets forth a delayed effective date. Allows the abandonment by delivering on or before the delayed effective date a statement of abandonment with the appropriate filing authority, signed on behalf of the domestic dividing entity.
136. Specifies that the division is abandoned and not effective on the delivery of the statement of abandonment for filing. Outlines statement requirements.
137. Requires a statement of division to be signed on behalf of the dividing entity.
138. Requires a statement of division to be delivered for filing:
 - a) with the appropriate filing authority, if any, for the domestic dividing entity and if there is a different filing authority for a domestic resulting entity, with that different filing authority; or
 - b) with the appropriate filing authority, if any, for a domestic resulting entity and, if there is a different filing authority for any other domestic resulting agency, with the different filing authority.
139. Outlines requirements for statement of division content. Allows a statement of division to contain any other provision not prohibited by law.
140. Requires the amendment or public organizational document filed with the statement of division, if the resulting entity is a domestic filing entity, to satisfy statutory requirements and be deemed signed by means of the signing of the statement of division. Allows any provision that is not required to be included in a restatement of the public organizational document to be omitted.
141. Allows a plan of division that is signed on behalf of a domestic dividing entity to be delivered for filing with the appropriate filing authority instead of a statement of division if the domestic dividing entity or at least one resulting entity is a domestic filing entity, as provided by the plan. Prescribes that the plan has the same effect as a statement of division if the domestic resulting entity or domestic dividing entity is not a domestic filing entity, as provided by the plan.

142. Deems the statement of division to have become effective on the date and time of the delivery for filing with the appropriate filing authority or authorities if the dividing entity or resulting entity is a domestic filing entity and the statement of division has been approved for filing. If applicable, the statement of division is effective if a later date and time is specified in the statement.
143. Stipulates that the division is effective on the signing of the statement of division or, if applicable, at a later date and time as specified in the statement, if neither the dividing entity nor the resulting entity are a domestic filing entity.
144. Specifies that when a division becomes effective:
 - a) the dividing entity continues to exist, if the dividing entity is to survive the division;
 - b) the dividing entity ceases to exist, if the dividing entity is not to survive the division; and
 - c) the resulting entities created in the division come into existence. Further outlines the effects of an effective merger.
145. Stipulates that the division does not give rise to any rights that an interest holder, governor or third party would otherwise have on a dissolution, liquidation or winding up of the dividing entity, unless provided in the plan of division, governing statute or organizational documents.
146. Specifies that a person that did not have interest holder liability with respect to the dividing entity, and that becomes subject to interest holder liability with respect to the domestic resulting entity as a result of the domestication, has interest holder liability only to the extent provided by the governing statute or organizational documents of the domestic resulting entity, and then, only for those obligations that arise after the division becomes effective.
147. Outlines stipulations concerning the interest holder liability of a person that ceases to hold an interest in a domestic dividing entity with respect to which the person had interest holder liability.
148. Stipulates that, when a division becomes effective, a foreign entity that is a resulting entity may be served with process in this state for the collection and enforcement of any obligations of a domestic dividing entity that were allocated to the foreign entity, including obligations arising out of the exercise of appraisal rights. Specifies that if the foreign entity is not qualified, the foreign entity appoints the appropriate filing authority as its agent for service of process for collecting or enforcing those obligations.
149. Revokes or cancels, automatically, the authority, registration or other qualification granted by the appropriate filing authority to transact business or conduct affairs in this state of a dividing entity that is a qualified foreign entity when the division becomes effective.
150. Stipulates that a person does not have constructive notice of an allocation of an interest in real estate in a division until the allocation is recorded in compliance with the

requirements for recording of interests in real estate in the state where the real property is located.

151. Stipulates that each resulting entity is liable, jointly and severally, with the other resulting entities for the obligations of the dividing entity that existed immediately before the effectiveness of the division, and that all those obligations of the dividing entity are automatically obligations of each resulting entity without assignment, assumption or delegations.
152. Outlines instances when a resulting entity is not liable for an obligation of the dividing entity.
153. Allows a resulting entity to enter into agreements or other arrangements for purposes of mitigating risks associated with the entity's liability for an obligation of the dividing entity. Permits the agreements or arrangements to be entered into with one or more of the other resulting entities or with third parties and to include indemnification, contribution guaranty, insurance, offset, loan, investment and any other lawful means of dealing with the risks associated with the liability for the obligation.
154. Stipulates that liens, security interests and other encumbrances on the property of the dividing entity are not impaired by the division, regardless of whether that property has become the property of a resulting entity that is not the dividing entity, the dividing entity is one of the resulting entities or any other enforceable allocation of obligations of the dividing entity, unless the obligee has otherwise agreed or consented.
155. Stipulates that each resulting entity is bound by the security agreement unless the secured party has otherwise agreed or consented if the dividing entity is bound by a security agreement or its counterpart as enacted in any jurisdiction and the security agreement provides that the security interest attaches to after-acquired collateral.
156. Specifies that the division is deemed not to be a dividend or other distribution by the dividing entity or any resulting entity.
157. Declares a division ineffective if a statement of division is filed with the appropriate filing authority and the division is not authorized by the law of the relevant foreign jurisdiction.
158. Requires a statement of ineffectiveness of division to be signed on behalf of the entity on behalf of which the statement of division was signed and delivered for filing with the appropriate filing authority to reflect the ineffectiveness in the public record.
159. Outlines the content of a statement of ineffectiveness of division.
160. Stipulates that the entity that attempted the division is:
 - a) responsible to any other person for any obligation incurred by that person that arises out of or relates to the ineffectiveness of the attempted division, unless the entity establishes that the obligation was not incurred in good faith; and

- b) deemed to have appointed the appropriate filing authority as its agent for service of process for any action arising, unless the entity is a domestic or a qualified foreign entity.
161. Specifies that the entity that attempted the division and their respective interest holders, governors or other representatives are not civilly or criminally liable if they were acting in good faith and are prohibited from being found guilty in connection with an ineffective division in certain situations.

Relationship to other laws

162. States that the principles of law and equity supplement this legislation, unless displaced by particular provisions and that the language does not affect the application or requirements of law except as specifically provided.
163. Prohibits a transaction effected by the law from creating or impairing any right or obligation on the part of a person under a provision of the laws of Arizona other than those relating to a change in control, takeover, business combination, control share acquisition or similar transaction involving a domestic merging, acquired, converting, domestication or dividing corporation.
164. Specifies that if the corporation does not survive the transaction, then the termination satisfies any requirements. Stipulates that the approval of the plan relating to the transaction is by a vote of the shareholders or directors that is sufficient to create or impair the right or obligation directly under the provision, if the corporation survives the transaction.

Fees

165. Stipulates that a corporation or nonprofit corporation file a statement of merger, interest exchange, conversion, domestication or division with the ACC, which carries a \$100 fee.
166. Applies a \$10 fee for a nonprofit electric generation and transmission cooperative corporation filing a statement of interest exchange, conversion, domestication or division with the ACC.
167. Applies a \$50 fee for a limited liability company to file a statement of interest exchange, conversion, domestication or division.

Miscellaneous

168. Stipulates that a shareholder of a domestic corporation is entitled to dissent from and obtain payment of the fair value of the shareholder's shares in the consummation of a plan of domestication, conversion or division if certain stipulations are met.
169. Requires a plan to be approved by all members of a domestic limited liability company that is to be a party or otherwise undertake a transaction, unless the operating agreement provides otherwise.

170. Requires consideration be given to the need to promote consistency of the law with respect to its subject matter among states that enact similar legislation.
171. Stipulates that the new statutory chapter modifies, limits and supersedes The Electronic Signatures in Global and National Commerce Act but does not modify, limit or supersede federal law concerning general rule of validity or authorize electronic delivery of any notices.
172. Specifies that the new statutory chapter does not affect an action or proceeding commenced or right accrued before the effective date.
173. Titles the new statutory chapter the *Arizona Entity Restructuring Act*.
174. Defines pertinent terms.
175. Makes various conforming and technical changes.
176. Becomes effective on January 1, 2015.

Prepared by Senate Research

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JT/tf