

SENATE, No. 2883

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED SEPTEMBER 14, 2020

Sponsored by:

Senator PATRICK J. DIEGNAN, JR.

District 18 (Middlesex)

SYNOPSIS

Modernizes business filing statutes to include entity conversion and domestication.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning certain corporations, amending N.J.S.14A:15-2,
2 and supplementing Title 14A of the New Jersey Statutes.

3
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6
7 1. (New section) (1) Following a conversion under applicable
8 law of an other business entity, which was authorized to transact
9 business in this State, to a foreign corporation, the foreign
10 corporation shall file in the filing office, an application executed on
11 behalf of the corporation setting forth:

12 (a) the name of the corporation and the jurisdiction of its
13 incorporation;

14 (b) the name of the other business entity, which was authorized
15 to transact business in this State;

16 (c) the ten digit identification number;

17 (d) the date of the conversion of the other business entity to the
18 foreign corporation;

19 (e) the date of the authorization of the other business entity to
20 transact business in this State;

21 (f) the address of the main business or headquarters office of the
22 corporation;

23 (g) the address of the registered office of the corporation in this
24 State, and the name of its registered agent in this State at that address,
25 together with a statement that the registered agent is an agent of the
26 corporation upon whom process against the corporation may be
27 served; and

28 (h) the character of the business it is to transact in this State,
29 together with a statement that it is authorized to transact business in
30 the jurisdiction of its incorporation.

31 (2) Attached to the application shall be a certificate setting forth
32 that the corporation is in good standing under the laws of the
33 jurisdiction of its incorporation, executed by the official of that
34 jurisdiction who has custody of the records pertaining to corporations
35 and dated not earlier than 30 days prior to the filing of the application,
36 but of a date subsequent to the conversion. If that certificate is in a
37 foreign language, a translation thereof under oath of the translator
38 shall be attached thereto.

39 (3) Upon the filing of the application, the filing office shall issue
40 to the foreign corporation a certificate of authority to transact
41 business in this State.

42 (4) As used in this section, "filing office" means the Division of
43 Revenue and Enterprise Services in the Department of the Treasury,
44 or other State office as designated by law.

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 2. (New section) (1) As used in this section:

2 “Filing office” means the Division of Revenue and Enterprise
3 Services in the Department of the Treasury, or other State office as
4 designated by law.

5 “Other entity” means a partnership, limited liability company,
6 statutory trust, business trust or association, real estate investment
7 trust, common-law trust, national association, or any other
8 unincorporated business, not including a sole proprietorship, whether
9 organized under the laws of this State or under the laws of any other
10 state or territory of the United States or the District of Columbia, the
11 United States or any foreign country or other foreign jurisdiction, or
12 a foreign corporation.

13 (2) Any other entity may, upon the authorization of conversion in
14 accordance with this section, convert to a domestic corporation.

15 (3) Prior to filing a certificate of conversion to corporation with
16 the filing office, a plan of conversion shall be approved in the manner
17 provided for by the document, instrument, agreement or other
18 writing, as the case may be, governing the internal affairs of the other
19 entity and the conduct of its business and in accordance with
20 applicable law, as appropriate, and a certificate of incorporation shall
21 be approved by the same authorization required to approve the
22 conversion.

23 (4) Any other entity may convert to a domestic corporation by
24 complying with subsection (3) of this section and filing in the filing
25 office:

26 (a) A certificate of conversion to corporation that has been
27 executed in accordance with subsection (10) of this section and filed
28 in accordance with N.J.S.14A:1-6; and

29 (b) A certificate of incorporation that has been executed,
30 acknowledged and filed in accordance with N.J.S.14A:1-6.

31 (5) The certificate of conversion to corporation shall state:

32 (a) The date on which and jurisdiction where the other entity was
33 first created, incorporated, formed or otherwise came into being and,
34 if it has changed, its jurisdiction immediately prior to its conversion
35 to a domestic corporation;

36 (b) The name of the other entity immediately prior to the filing of
37 the certificate of conversion to corporation;

38 (c) The name of the corporation as set forth in its certificate of
39 incorporation filed in accordance with subsection (4) of this section;

40 (d) The future effective date or time, which shall be a date or time
41 certain, of the conversion if it is not to be effective upon the filing of
42 the certificate of conversion, which is not to exceed 90 days after the
43 date of filing; and

44 (e) That the plan of conversion has been approved in the manner
45 provided for by the document, instrument, agreement or other
46 writing, as the case may be, governing the internal affairs of the other
47 entity and the conduct of its business and in accordance with
48 applicable law, as appropriate.

1 (6) Upon the effective time of the certificate of conversion to
2 corporation and the certificate of incorporation, the other entity shall
3 be converted to a domestic corporation and the corporation shall
4 thereafter be subject to all of the provisions of this title, except that
5 notwithstanding subsection (2) of N.J.S.14A:2-7, the existence of the
6 corporation shall be deemed to have commenced on the date the other
7 entity commenced its existence in the jurisdiction in which the other
8 entity was first created, formed, incorporated or otherwise came into
9 being.

10 (7) The conversion of any other entity to a domestic corporation
11 shall not be deemed to affect any obligations or liabilities of the other
12 entity incurred prior to its conversion to a domestic corporation or
13 the personal liability of any person incurred prior to conversion.

14 (8) When any other entity has been converted to a domestic
15 corporation pursuant to this section, the domestic corporation shall,
16 for all purposes of the laws of the State of New Jersey, be deemed to
17 be the same entity as the converting other entity. When any
18 conversion shall have become effective under this section, for all
19 purposes of the laws of the State of New Jersey, all of the rights,
20 privileges and powers of the other entity that has converted, and all
21 property, real, personal and mixed, and all debts due to that other
22 entity, as well as all other things and causes of action belonging to
23 that other entity, shall remain vested in the domestic corporation to
24 which that other entity has converted and shall be the property of that
25 domestic corporation and the title to any real property vested by deed
26 or otherwise in that other entity shall not revert or be in any way
27 impaired by reason of this act; but all rights of creditors and all liens
28 upon any property of that other entity shall be preserved unimpaired,
29 and all debts, liabilities and duties of the other entity that has
30 converted shall remain attached to the domestic corporation to which
31 that other entity has converted, and may be enforced against it to the
32 same extent as if said debts, liabilities and duties had originally been
33 incurred or contracted by it in its capacity as a domestic corporation.
34 The rights, privileges, powers and interests in property of the other
35 entity, as well as the debts, liabilities and duties of the other entity,
36 shall not be deemed, as a consequence of the conversion, to have been
37 transferred to the domestic corporation to which that other entity has
38 converted for any purpose of the laws of the State of New Jersey.

39 (9) Unless otherwise agreed for all purposes of the laws of the
40 State of New Jersey or as required under applicable non-New Jersey
41 law, the converting other entity shall not be required to wind up its
42 affairs or pay its liabilities and distribute its assets, and the
43 conversion shall not be deemed to constitute a dissolution of that
44 other entity and shall constitute a continuation of the existence of the
45 converting other entity in the form of a domestic corporation.

46 (10) The certificate of conversion to corporation shall be signed
47 by any person who is authorized to sign the certificate of conversion
48 to corporation on behalf of the other entity.

1 (11) In connection with a conversion hereunder, rights or
2 securities of, or interests in, the other entity which is to be converted
3 to a domestic corporation may be exchanged for or converted into
4 cash, property, or shares of stock, rights or securities of that domestic
5 corporation or, in addition to or in lieu thereof, may be exchanged for
6 or converted into cash, property, or shares of stock, rights or
7 securities of or interests in another domestic corporation or other
8 entity or may be cancelled.

9
10 3. (New section) (1) As used in this section:

11 “Filing office” means the Division of Revenue and Enterprise
12 Services in the Department of the Treasury, or other State office as
13 designated by law.

14 “Other entity” means a partnership, limited liability company,
15 statutory trust, business trust or association, real estate investment
16 trust, common-law trust, national association, or any other
17 unincorporated business, not including a sole proprietorship, whether
18 organized under the laws of this State or under the laws of any other
19 state or territory of the United States or the District of Columbia, the
20 United States or any foreign country or other foreign jurisdiction, or
21 a foreign corporation.

22 (2) A domestic corporation may, upon the authorization of
23 conversion in accordance with this section, convert to any other
24 entity.

25 (3) The board of directors of the corporation which desires to
26 convert under this section shall adopt a resolution approving a plan
27 of conversion, specifying the type of other entity into which the
28 corporation shall be converted and shall direct that the conversion be
29 submitted to a vote at a meeting of shareholders. Written notice shall
30 be given not less than 20 nor more than 60 days before that meeting
31 to each shareholder of record, whether or not entitled to vote at that
32 meeting, in the manner provided in the “New Jersey Business
33 Corporation Act” for the giving of notice of meetings of
34 shareholders. At each meeting, a vote of the shareholders shall be
35 taken on the proposed plan of conversion. The conversion shall be
36 approved upon receiving the affirmative vote of the holders of all
37 shares of outstanding stock, whether voting or nonvoting. The
38 conversion shall also be approved in the manner provided for by the
39 document, instrument, agreement or other writing, as the case may
40 be, governing the internal affairs of the other entity and the conduct
41 of its business and in accordance with applicable law, as appropriate.

42 (4) If a corporation shall convert in accordance with this section
43 to any other entity organized, formed or created under the laws of a
44 jurisdiction other than the State of New Jersey, the corporation shall
45 file with the filing office a certificate of conversion executed in
46 accordance with N.J.S.14A:1-6, which certifies:

47 (a) The name of the corporation, and if it has been changed, the
48 name under which it was originally incorporated;

- 1 (b) The date of filing of its original certificate of incorporation
2 with the filing office;
- 3 (c) The name and jurisdiction of the other entity to which the
4 corporation shall be converted;
- 5 (d) That the conversion has been approved in the manner
6 provided for by the document, instrument, agreement or other
7 writing, as the case may be, governing the internal affairs of the other
8 entity and the conduct of its business and in accordance with
9 applicable law, as appropriate; and
- 10 (e) The future effective date or time, which shall be a date or time
11 certain, of the conversion if it is not to be effective upon the filing of
12 the certificate of conversion, which is not to exceed 90 days after the
13 date of filing.
- 14 (f) If the other entity is to transact business in this State, it shall
15 comply with the provisions of this act with respect to foreign entities,
16 and, whether or not it is to transact business in this State, the
17 certificate of conversion required by this section shall, in addition to
18 other required information, set forth:
- 19 (i) an agreement by that other entity that it may be served with
20 process in this State in any proceeding for the enforcement of any
21 obligation of the converting corporation; and
- 22 (ii) an irrevocable appointment by that other entity of the filing
23 office of this State as its agent to accept service of process in any
24 proceeding for the enforcement of any obligation of the converting
25 corporation, and the post office address, within or without this State,
26 to which the filing office shall mail a copy of the process in that
27 proceeding.
- 28 (g) In the event of service upon the filing office in accordance
29 with paragraph (f) of subsection (4) of this section, the filing office
30 shall forthwith notify the corporation that has converted out of the
31 State of New Jersey by letter, directed to the corporation that has
32 converted out of the State of New Jersey at the address so specified,
33 unless that corporation shall have designated in writing to the filing
34 office a different address for that purpose, in which case it shall be
35 mailed to the last address designated. The letter shall be sent by a
36 mail or courier service that includes a record of mailing or deposit
37 with the courier and a record of delivery evidenced by the signature
38 of the recipient. The letter shall enclose a copy of the process and
39 any other papers served on the filing office pursuant to this
40 subsection. It shall be the duty of the plaintiff to serve process and
41 any other papers in duplicate, to notify the filing office that service
42 is being effected pursuant to this subsection and to pay the filing
43 office the sum of \$75.00 for the use of the State, which sum shall be
44 taxed as part of the costs in the proceeding, if the plaintiff shall
45 prevail therein. The filing office shall maintain an alphabetical
46 record of any service, setting forth the name of the plaintiff and the
47 defendant, the title, docket number and nature of the proceeding in
48 which process has been served, the fact that service has been effected

1 pursuant to this subsection, the return date thereof, and the day and
2 hour service was made. The filing office shall not be required to
3 retain the information longer than five years from receipt of the
4 service of process.

5 (5) Upon the filing in the filing office of a certificate of
6 conversion to a non-New Jersey entity in accordance with subsection
7 (4) of this section or upon the future effective date or time of the
8 certification of conversion to a non-Jersey entity and payment to the
9 filing office of all fees prescribed under this title, the filing office
10 shall certify that the corporation has filed all documents and paid all
11 fees required by this title, and thereupon the corporation shall cease
12 to exist as a domestic corporation at the time the certificate of
13 conversion becomes effective in accordance with N.J.S.14A:1-6.
14 The certificate of the filing office shall be prima facie evidence of the
15 conversion by such corporation out of the State of New Jersey.

16 (6) The conversion of a corporation out of the State of New
17 Jersey in accordance with this section and the resulting cessation of
18 its existence as a domestic corporation pursuant to a certificate of
19 conversion to a non-New Jersey entity shall not be deemed to affect
20 any obligations or liabilities of the corporation incurred prior to
21 conversion or the personal liability of any person incurred prior to
22 conversion, nor shall it be deemed to affect the choice of law
23 applicable to the corporation with respect to matters arising prior to
24 conversion.

25 (7) Unless otherwise provided in the plan of conversion adopted
26 in accordance with this section, the converting corporation shall not
27 be required to wind up its affairs or pay its liabilities and distribute
28 its assets, and the conversion shall not constitute a dissolution of the
29 corporation.

30 (8) In connection with a conversion of a domestic corporation
31 to an other entity pursuant to this section, shares of stock of the
32 domestic corporation which is to be converted may be exchanged for
33 or converted into cash, property rights or securities of, or interest in,
34 the other entity to which the domestic corporation is being converted
35 or, in addition to or in lieu thereof, may be exchanged for or
36 converted into cash, property, shares of stock, rights or securities of,
37 or interest in, another domestic corporation or other entity or may be
38 cancelled.

39 (9) When a corporation has been converted to the other entity
40 pursuant to this section, the other entity shall, for all purposes of the
41 laws of the State of New Jersey, be deemed to be the same entity as
42 the corporation. When any conversion shall have become effective
43 under this section, for all purposes of the laws of the State of New
44 Jersey, all of the rights, privileges and powers of the corporation that
45 has converted and all property, real, personal and mixed, and all debts
46 due to that corporation, as well as all other things and causes of action
47 belonging to that corporation, shall remain vested in the other entity
48 to which that corporation has converted and shall be the property of

1 that other entity, and the title to any real property vested by deed or
2 otherwise in that corporation shall not revert or be in any way
3 impaired by reason of this act; but all rights of creditors and all liens
4 upon any property of that corporation shall be preserved unimpaired,
5 and all debts, liabilities and duties of the corporation that has
6 converted shall remain attached to the other entity to which that
7 corporation has converted and may be enforced against it to the same
8 extent as if said debts, liabilities and duties had originally been
9 incurred or contracted by it in its capacity as that other entity. The
10 rights, privileges, powers and interest in property of the corporation
11 that has converted, as well as the debts, liabilities and duties of that
12 corporation, shall not be deemed, as a consequence of the conversion,
13 to have been transferred to the other entity to which that corporation
14 has converted for any purpose of the laws of the State of New Jersey.

15 (10) No vote of shareholders of a corporation shall be necessary
16 to authorize a conversion if no shares of the stock of that corporation
17 shall have been issued prior to the adoption by the board of directors
18 of the resolution approving the conversion.

19

20 4. N.J.S.14A:15-2 is amended to read as follows:

21 14A:15-2. On filing any certificate or other papers relative to
22 corporations in the Department of the Treasury, there shall be paid to
23 the State Treasurer, filing fees as follows:

24 (1) Certificate of incorporation and amendments thereto:

25 (a) for filing the original certificate of incorporation..... \$125.00

26 (b) for filing a certificate of amendment of the certificate of
27 incorporation, including any number of amendments..... \$75.00

28 (c) for filing a certificate of abandonment of one or more
29 amendments of the certificate of incorporation..... \$75.00

30 (d) for filing a certificate of merger or a certificate of
31 consolidation..... \$75.00

32 (e) for filing a certificate of abandonment of a merger or
33 consolidation..... \$75.00

34 (2) Restated certificate of incorporation:

35 for filing a restated certificate of incorporation, including any
36 amendments of the certificate of incorporation concurrently
37 adopted..... \$75.00

38 (3) Dissolution of corporation:

39 (a) for filing a certificate of dissolution..... \$75.00

40 (b) for filing a certificate of revocation of dissolution
41 proceedings..... \$75.00

42 (4) Admission and withdrawal of foreign corporation:

43 (a) for filing an application for a certificate of authority to
44 transact business in this State and issuing a certificate of authority.....
45 \$125.00

46 (b) for filing an application for an amended certificate of
47 authority to transact business in this State and issuing an amended
48 certificate of authority..... \$75.00

(c) for filing an application for withdrawal from this State and issuing a certificate of withdrawal..... \$75.00

(d) for filing a certificate of change of post-office address to which process may be mailed by the State Treasurer..... \$25.00

(e) for filing a certificate, order or decree with respect to the dissolution of a foreign corporation, the termination of its existence, or the cancellation of its authority, and issuing a certificate of withdrawal..... \$75.00

(5) Registered office and registered agent:

(a) for filing a certificate of change of address of registered office, or change of registered agent, or both..... \$25.00

(b) (i) for filing a certificate of change of address of registered agent, where such certificate effects a change in the address of the registered office of one to 499 corporations or of 500 or more corporations in cases where the filing information is not transmitted to the State Treasurer in a machine readable format agreeable to the Division of **【Commercial Recording】 Revenue and Enterprise Services**, for each corporation named in the certificate..... \$25.00

(ii) for filing a certificate of change of address of registered agent, where such certificate effects a change in the address of the registered office of 500 or more corporations in cases where the filing information is transmitted to the State Treasurer in a machine readable format agreeable to the Division of **【Commercial Recording】 Revenue and Enterprise Services**..... \$5,000.00

(iii) In addition to the fee imposed pursuant to subparagraph (ii) of this paragraph, the State Treasurer may assess an additional fee not to exceed those administrative costs associated with the technical transmission of the filing information.

(c) for filing an affidavit of resignation of a registered agent..... \$25.00

(6) Annual report:

for each such report required to be filed \$75.00

(7) Tax clearance certificate from the Director of the Division of Taxation: for each such certificate required to be filed..... \$20.00

(8) for filing a certificate of conversion.....75.00

(cf: P.L.2019, c.149, s.3.)

5. This act shall take effect on the 180th day following enactment.

STATEMENT

This bill modifies applicable business filing statutes contained in the “New Jersey Business Corporation Act” by adding domestication and conversion provisions across all business entity types. Conversion is the process of converting from one type of business entity to another type. Domestication is the process of an out-of-state

S2883 DIEGNAN

10

1 business entity converting to a domestic corporation. New Jersey law
2 currently does not permit these actions. This bill will make New
3 Jersey a more attractive State for the incorporation of businesses, by
4 bringing it in line with many other states that allow domestication
5 and conversion.