

ASSEMBLY, No. 3513

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED FEBRUARY 25, 2020

Sponsored by:

Assemblyman ROY FREIMAN

District 16 (Hunterdon, Mercer, Middlesex and Somerset)

Assemblyman RAJ MUKHERJI

District 33 (Hudson)

Assemblyman VINCENT MAZZEO

District 2 (Atlantic)

Assemblywoman JOANN DOWNEY

District 11 (Monmouth)

Co-Sponsored by:

Assemblyman Webber and Assemblywoman Murphy

SYNOPSIS

Modernizes business filing statutes to include entity conversion and domestication.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 7/20/2020)

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
22 the 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
25 address, together with a statement that the registered agent is an
26 agent of the corporation upon whom process against the corporation
27 may be 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
35 corporations and dated not earlier than 30 days prior to the filing of
36 the application, but of a date subsequent to the conversion. If that
37 certificate is in a foreign language, a translation thereof under oath
38 of the translator shall be attached thereto.

39 (3) Upon the filing of the application, the filing office shall
40 issue 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,
9 whether organized under the laws of this State or under the laws of
10 any other state or territory of the United States or the District of
11 Columbia, the United States or any foreign country or other foreign
12 jurisdiction, or a foreign corporation.

13 (2) Any other entity may, upon the authorization of conversion
14 in 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
17 manner provided for by the document, instrument, agreement or
18 other writing, as the case may be, governing the internal affairs of
19 the other entity and the conduct of its business and in accordance
20 with applicable law, as appropriate, and a certificate of
21 incorporation shall be approved by the same authorization required
22 to approve the 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
28 filed 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
33 was first created, incorporated, formed or otherwise came into being
34 and, if it has changed, its jurisdiction immediately prior to its
35 conversion to a domestic corporation;

36 (b) The name of the other entity immediately prior to the filing
37 of 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
41 time certain, of the conversion if it is not to be effective upon the
42 filing of the certificate of conversion, which is not to exceed 90
43 days after the 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
47 other 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
3 shall be converted to a domestic corporation and the corporation
4 shall thereafter be subject to all of the provisions of this title, except
5 that notwithstanding subsection (2) of N.J.S.14A:2-7, the existence
6 of the corporation shall be deemed to have commenced on the date
7 the other entity commenced its existence in the jurisdiction in which
8 the other entity was first created, formed, incorporated or otherwise
9 came into 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
12 other entity incurred prior to its conversion to a domestic
13 corporation or the personal liability of any person incurred prior to
14 conversion.

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

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

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

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

12

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

14 "Filing office" means the Division of Revenue and Enterprise
15 Services in the Department of the Treasury, or other State office as
16 designated by law.

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

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

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

46 (4) If a corporation shall convert in accordance with this section
47 to any other entity organized, formed or created under the laws of a
48 jurisdiction other than the State of New Jersey, the corporation shall

1 file with the filing office a certificate of conversion executed in
2 accordance with N.J.S.14A:1-6, which certifies:

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

5 (b) The date of filing of its original certificate of incorporation
6 with the filing office;

7 (c) The name and jurisdiction of the other entity to which the
8 corporation shall be converted;

9 (d) That the conversion has been approved in the manner
10 provided for by the document, instrument, agreement or other
11 writing, as the case may be, governing the internal affairs of the
12 other entity and the conduct of its business and in accordance with
13 applicable law, as appropriate; and

14 (e) The future effective date or time, which shall be a date or
15 time certain, of the conversion if it is not to be effective upon the
16 filing of the certificate of conversion, which is not to exceed 90
17 days after the date of filing.

18 (f) If the other entity is to transact business in this State, it shall
19 comply with the provisions of this act with respect to foreign
20 entities, and, whether or not it is to transact business in this State,
21 the certificate of conversion required by this section shall, in
22 addition to other required information, set forth:

23 (i) an agreement by that other entity that it may be served with
24 process in this State in any proceeding for the enforcement of any
25 obligation of the converting corporation; and

26 (ii) an irrevocable appointment by that other entity of the filing
27 office of this State as its agent to accept service of process in any
28 proceeding for the enforcement of any obligation of the converting
29 corporation, and the post office address, within or without this
30 State, to which the filing office shall mail a copy of the process in
31 that proceeding.

32 (g) In the event of service upon the filing office in accordance
33 with paragraph (f) of subsection (4) of this section, the filing office
34 shall forthwith notify the corporation that has converted out of the
35 State of New Jersey by letter, directed to the corporation that has
36 converted out of the State of New Jersey at the address so specified,
37 unless that corporation shall have designated in writing to the filing
38 office a different address for that purpose, in which case it shall be
39 mailed to the last address designated. The letter shall be sent by a
40 mail or courier service that includes a record of mailing or deposit
41 with the courier and a record of delivery evidenced by the signature
42 of the recipient. The letter shall enclose a copy of the process and
43 any other papers served on the filing office pursuant to this
44 subsection. It shall be the duty of the plaintiff to serve process and
45 any other papers in duplicate, to notify the filing office that service
46 is being effected pursuant to this subsection and to pay the filing
47 office the sum of \$75.00 for the use of the State, which sum shall be
48 taxed as part of the costs in the proceeding, if the plaintiff shall

1 prevail therein. The filing office shall maintain an alphabetical
2 record of any service, setting forth the name of the plaintiff and the
3 defendant, the title, docket number and nature of the proceeding in
4 which process has been served, the fact that service has been
5 effected pursuant to this subsection, the return date thereof, and the
6 day and hour service was made. The filing office shall not be
7 required to retain the information longer than five years from
8 receipt of the service of process.

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

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

30 (7) Unless otherwise provided in the plan of conversion
31 adopted in accordance with this section, the converting corporation
32 shall not be required to wind up its affairs or pay its liabilities and
33 distribute its assets, and the conversion shall not constitute a
34 dissolution of the corporation.

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

44 (9) When a corporation has been converted to the other entity
45 pursuant to this section, the other entity shall, for all purposes of the
46 laws of the State of New Jersey, be deemed to be the same entity as
47 the corporation. When any conversion shall have become effective

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

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

26

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

28 14A:15-2. On filing any certificate or other papers relative to
29 corporations in the Department of the Treasury, there shall be paid
30 to the State Treasurer, filing fees as follows:

31 (1) Certificate of incorporation and amendments thereto:

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

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

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

37 (d) for filing a certificate of merger or a certificate of
38 consolidation..... \$75.00

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

41 (2) Restated certificate of incorporation:

42 for filing a restated certificate of incorporation, including any
43 amendments of the certificate of incorporation concurrently
44 adopted..... \$75.00

45 (3) Dissolution of corporation:

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

47 (b) for filing a certificate of revocation of dissolution
48 proceedings..... \$75.00

- 1 (4) Admission and withdrawal of foreign corporation:
2 (a) for filing an application for a certificate of authority to
3 transact business in this State and issuing a certificate of
4 authority..... \$125.00
5 (b) for filing an application for an amended certificate of
6 authority to transact business in this State and issuing an amended
7 certificate of authority..... \$75.00
8 (c) for filing an application for withdrawal from this State and
9 issuing a certificate of withdrawal..... \$75.00
10 (d) for filing a certificate of change of post-office address to
11 which process may be mailed by the State Treasurer..... \$25.00
12 (e) for filing a certificate, order or decree with respect to the
13 dissolution of a foreign corporation, the termination of its existence,
14 or the cancellation of its authority, and issuing a certificate of
15 withdrawal..... \$75.00
16 (5) Registered office and registered agent:
17 (a) for filing a certificate of change of address of registered
18 office, or change of registered agent, or both..... \$25.00
19 (b) (i) for filing a certificate of change of address of registered
20 agent, where such certificate effects a change in the address of the
21 registered office of one to 499 corporations or of 500 or more
22 corporations in cases where the filing information is not transmitted
23 to the State Treasurer in a machine readable format agreeable to the
24 Division of **【Commercial Recording】** Revenue and Enterprise
25 Services, for each corporation named in the certificate..... \$25.00
26 (ii) for filing a certificate of change of address of registered
27 agent, where such certificate effects a change in the address of the
28 registered office of 500 or more corporations in cases where the
29 filing information is transmitted to the State Treasurer in a machine
30 readable format agreeable to the Division of **【Commercial**
31 **Recording】** Revenue and Enterprise Services..... \$5,000.00
32 (iii) In addition to the fee imposed pursuant to subparagraph (ii)
33 of this paragraph, the State Treasurer may assess an additional fee
34 not to exceed those administrative costs associated with the
35 technical transmission of the filing information.
36 (c) for filing an affidavit of resignation of a registered agent.....
37 \$25.00
38 (6) Annual report:
39 for each such report required to be filed \$75.00
40 (7) Tax clearance certificate from the Director of the Division of
41 Taxation: for each such certificate required to be filed..... \$20.00
42 (8) for filing a certificate of conversion.....75.00
43 (cf: P.L.2019, c.149, s.3.)
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45 5. This act shall take effect on the 180th day following
46 enactment.

STATEMENT

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