

[First Reprint]

SENATE, No. 142

STATE OF NEW JERSEY
220th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2022 SESSION

Sponsored by:

Senator PATRICK J. DIEGNAN, JR.

District 18 (Middlesex)

Senator NELLIE POU

District 35 (Bergen and Passaic)

Assemblyman ROY FREIMAN

District 16 (Hunterdon, Mercer, Middlesex and Somerset)

Assemblyman PAUL D. MORIARTY

District 4 (Camden and Gloucester)

Assemblywoman GABRIELA M. MOSQUERA

District 4 (Camden and Gloucester)

Co-Sponsored by:

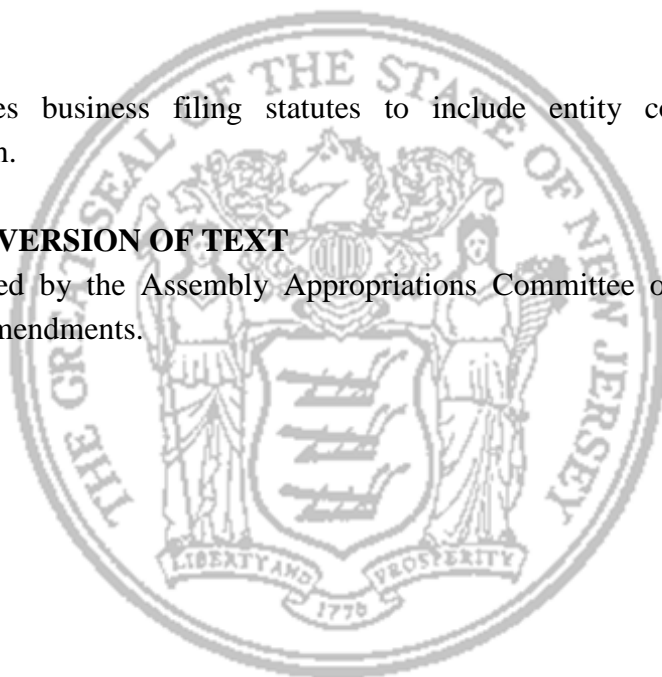
Assemblywomen Murphy and Park

SYNOPSIS

Modernizes business filing statutes to include entity conversion and domestication.

CURRENT VERSION OF TEXT

As reported by the Assembly Appropriations Committee on October 20, 2022, with amendments.



(Sponsorship Updated As Of: 10/27/2022)

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,

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.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly AAP committee amendments adopted October 20, 2022.

1 or other State office as designated by law.

2

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

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

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

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

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

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

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

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

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

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

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

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

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

46 (e) That the plan of conversion has been approved in the manner
47 provided for by the document, instrument, agreement or other
48 writing, as the case may be, governing the internal affairs of the

1 other entity and the conduct of its business and in accordance with
2 applicable law, as appropriate.

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

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

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

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

1 other entity and shall constitute a continuation of the existence of
2 the converting other entity in the form of a domestic corporation.

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

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

14

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

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

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

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

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

- 1 (4) ¹A domestic corporation that converts to any other entity
2 that will be domiciled in this State shall file with the filing office a
3 certificate of conversion that states:
- 4 (a) the name of the corporation, and if it wishes to change its
5 name, the proposed new name;
- 6 (b) the future effective date or time, which shall be a date or
7 time certain, of the conversion if it is not to be effective upon the
8 filing of the certificate of conversion, which is not to exceed 90
9 days after the date of filing; and
- 10 (c) that the conversion was adopted pursuant to the provisions
11 of subsection (3) of this section.
- 12 (5)¹ If a corporation shall convert in accordance with this section
13 to any other entity organized, formed or created under the laws of a
14 jurisdiction other than the State of New Jersey, the corporation shall
15 file with the filing office a certificate of conversion executed in
16 accordance with N.J.S.14A:1-6, which certifies:
- 17 (a) **1**~~【The】~~ the¹ name of the corporation, and if it has been
18 changed, the name under which it was originally incorporated;
- 19 (b) **1**~~【The】~~ the¹ date of filing of its original certificate of
20 incorporation with the filing office;
- 21 (c) **1**~~【The】~~ the¹ name and jurisdiction of the other entity to
22 which the corporation shall be converted;
- 23 (d) **1**~~【That】~~ that¹ the conversion has been approved in the
24 manner provided for by the document, instrument, agreement or
25 other writing, as the case may be, governing the internal affairs of
26 the other entity and the conduct of its business and in accordance
27 with applicable law, as appropriate; and
- 28 (e) **1**~~【The】~~ the¹ future effective date or time, which shall be a
29 date or time certain, of the conversion if it is not to be effective
30 upon the filing of the certificate of conversion, which is not to
31 exceed 90 days after the date of filing.
- 32 (f) If the other entity is to transact business in this State, it shall
33 comply with the provisions of this act with respect to foreign
34 entities, and, whether or not it is to transact business in this State,
35 the certificate of conversion required by this section shall, in
36 addition to other required information, set forth:
- 37 (i) an agreement by that other entity that it may be served with
38 process in this State in any proceeding for the enforcement of any
39 obligation of the converting corporation; and
- 40 (ii) an irrevocable appointment by that other entity of the filing
41 office of this State as its agent to accept service of process in any
42 proceeding for the enforcement of any obligation of the converting
43 corporation, and the post office address, within or without this
44 State, to which the filing office shall mail a copy of the process in
45 that proceeding.
- 46 (g) In the event of service upon the filing office in accordance
47 with paragraph (f) of subsection **1**~~【(4)】~~ (5)¹ of this section, the

1 filing office shall forthwith notify the corporation that has
2 converted out of the State of New Jersey by letter, directed to the
3 corporation that has converted out of the State of New Jersey at the
4 address so specified, unless that corporation shall have designated
5 in writing to the filing office a different address for that purpose, in
6 which case it shall be mailed to the last address designated. The
7 letter shall be sent by a mail or courier service ¹ **["that includes"]** ,
8 and the filing office shall maintain¹ a record of ¹ the¹ mailing or
9 deposit with the courier ¹ **["and a record of delivery evidenced by the
10 signature of the recipient"]**¹ . The letter shall enclose a copy of the
11 process and any other papers served on the filing office pursuant to
12 this subsection. It shall be the duty of the plaintiff to serve process
13 and any other papers in duplicate, to notify the filing office that
14 service is being effected pursuant to this subsection and to pay the
15 filing office the sum of \$75.00 for the use of the State, which sum
16 shall be taxed as part of the costs in the proceeding, if the plaintiff
17 shall prevail therein. The filing office shall maintain an
18 alphabetical record of any service, setting forth the name of the
19 plaintiff and the defendant, the title, docket number and nature of
20 the proceeding in which process has been served, the fact that
21 service has been effected pursuant to this subsection, the return date
22 thereof, and the day and hour service was made. The filing office
23 shall not be required to retain the information longer than five years
24 from receipt of the service of process.

25 ¹ **["(5) (6)"]**¹ Upon the filing in the filing office of a certificate of
26 conversion to a non-New Jersey entity in accordance with
27 subsection ¹ **["(4) (5)"]**¹ of this section or upon the future effective
28 date or time of the certification of conversion to a non-Jersey entity
29 and payment to the filing office of all fees prescribed under this
30 title, the filing office shall certify that the corporation has filed all
31 documents and paid all fees required by this title, and thereupon the
32 corporation shall cease to exist as a domestic corporation at the time
33 the certificate of conversion becomes effective in accordance with
34 N.J.S.14A:1-6. The certificate of the filing office shall be prima
35 facie evidence of the conversion by such corporation out of the
36 State of New Jersey.

37 ¹ **["(6) (7)"]**¹ The conversion of a corporation out of the State of
38 New Jersey in accordance with this section and the resulting
39 cessation of its existence as a domestic corporation pursuant to a
40 certificate of conversion to a non-New Jersey entity shall not be
41 deemed to affect any obligations or liabilities of the corporation
42 incurred prior to conversion or the personal liability of any person
43 incurred prior to conversion, nor shall it be deemed to affect the
44 choice of law applicable to the corporation with respect to matters
45 arising prior to conversion.

46 ¹ **["(7) (8)"]**¹ Unless otherwise provided in the plan of conversion
47 adopted in accordance with this section, the converting corporation

1 shall not be required to wind up its affairs or pay its liabilities and
2 distribute its assets, and the conversion shall not constitute a
3 dissolution of the corporation.

4 ¹~~[(8)]~~ (9)¹ In connection with a conversion of a domestic
5 corporation to an other entity pursuant to this section, shares of
6 stock of the domestic corporation which is to be converted may be
7 exchanged for or converted into cash, property rights or securities
8 of, or interest in, the other entity to which the domestic corporation
9 is being converted or, in addition to or in lieu thereof, may be
10 exchanged for or converted into cash, property, shares of stock,
11 rights or securities of, or interest in, another domestic corporation
12 or other entity or may be cancelled.

13 ¹~~[(9)]~~ (10)¹ When a corporation has been converted to the other
14 entity pursuant to this section, the other entity shall, for all purposes
15 of the laws of the State of New Jersey, be deemed to be the same
16 entity as the corporation. When any conversion shall have become
17 effective under this section, for all purposes of the laws of the State
18 of New Jersey, all of the rights, privileges and powers of the
19 corporation that has converted and all property, real, personal and
20 mixed, and all debts due to that corporation, as well as all other
21 things and causes of action belonging to that corporation, shall
22 remain vested in the other entity to which that corporation has
23 converted and shall be the property of that other entity, and the title
24 to any real property vested by deed or otherwise in that corporation
25 shall not revert or be in any way impaired by reason of this act; but
26 all rights of creditors and all liens upon any property of that
27 corporation shall be preserved unimpaired, and all debts, liabilities
28 and duties of the corporation that has converted shall remain
29 attached to the other entity to which that corporation has converted
30 and may be enforced against it to the same extent as if said debts,
31 liabilities and duties had originally been incurred or contracted by it
32 in its capacity as that other entity. The rights, privileges, powers
33 and interest in property of the corporation that has converted, as
34 well as the debts, liabilities and duties of that corporation, shall not
35 be deemed, as a consequence of the conversion, to have been
36 transferred to the other entity to which that corporation has
37 converted for any purpose of the laws of the State of New Jersey.

38 ¹~~[(10)]~~ (11)¹ No vote of shareholders of a corporation shall be
39 necessary to authorize a conversion if no shares of the stock of that
40 corporation shall have been issued prior to the adoption by the
41 board of directors of the resolution approving the conversion.

42

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

44 14A:15-2. On filing any certificate or other papers relative to
45 corporations in the Department of the Treasury, there shall be paid
46 to the State Treasurer, filing fees as follows:

47 (1) Certificate of incorporation and amendments thereto:

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

- 1 (b) for filing a certificate of amendment of the certificate of
2 incorporation, including any number of amendments..... \$75.00
- 3 (c) for filing a certificate of abandonment of one or more
4 amendments of the certificate of incorporation..... \$75.00
- 5 (d) for filing a certificate of merger or a certificate of
6 consolidation..... \$75.00
- 7 (e) for filing a certificate of abandonment of a merger or
8 consolidation..... \$75.00
- 9 (2) Restated certificate of incorporation:
10 for filing a restated certificate of incorporation, including any
11 amendments of the certificate of incorporation concurrently
12 adopted..... \$75.00
- 13 (3) Dissolution of corporation:
14 (a) for filing a certificate of dissolution..... \$75.00
15 (b) for filing a certificate of revocation of dissolution
16 proceedings..... \$75.00
- 17 (4) Admission and withdrawal of foreign corporation:
18 (a) for filing an application for a certificate of authority to
19 transact business in this State and issuing a certificate of
20 authority..... \$125.00
21 (b) for filing an application for an amended certificate of
22 authority to transact business in this State and issuing an amended
23 certificate of authority..... \$75.00
24 (c) for filing an application for withdrawal from this State and
25 issuing a certificate of withdrawal..... \$75.00
26 (d) for filing a certificate of change of post-office address to
27 which process may be mailed by the State Treasurer..... \$25.00
28 (e) for filing a certificate, order or decree with respect to the
29 dissolution of a foreign corporation, the termination of its existence,
30 or the cancellation of its authority, and issuing a certificate of
31 withdrawal..... \$75.00
- 32 (5) Registered office and registered agent:
33 (a) for filing a certificate of change of address of registered
34 office, or change of registered agent, or both..... \$25.00
35 (b) (i) for filing a certificate of change of address of registered
36 agent, where such certificate effects a change in the address of the
37 registered office of one to 499 corporations or of 500 or more
38 corporations in cases where the filing information is not transmitted
39 to the State Treasurer in a machine readable format agreeable to the
40 Division of **【Commercial Recording】** Revenue and Enterprise
41 Services, for each corporation named in the certificate..... \$25.00
42 (ii) for filing a certificate of change of address of registered
43 agent, where such certificate effects a change in the address of the
44 registered office of 500 or more corporations in cases where the
45 filing information is transmitted to the State Treasurer in a machine
46 readable format agreeable to the Division of **【Commercial**
47 **Recording】** Revenue and Enterprise Services..... \$5,000.00

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

5 (c) for filing an affidavit of resignation of a registered agent.....
6 \$25.00

7 (6) Annual report:
8 for each such report required to be filed \$75.00

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

11 (8) for filing a certificate of conversion.....75.00
12 (cf: P.L.2019, c.149, s.3.)

13

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