



January 19, 2018

SENATE BILL No. 180

DIGEST OF SB 180 (Updated January 17, 2018 3:24 pm - DI 106)

Citations Affected: IC 23-0.5; IC 23-0.6; IC 23-1; IC 23-1.5; IC 23-17.

Synopsis: Uniform business organizations. Makes various technical amendments to the Uniform Business Organizations Code and Uniform Business Organization Transactions Act, including changes in provisions concerning information to be submitted in filings with the secretary of state, use of business names, registration of foreign entities, and administrative dissolution. Makes conforming changes.

Effective: January 1, 2018 (retroactive); July 1, 2018.

Bray

January 8, 2018, read first time and referred to Committee on Judiciary.
January 18, 2018, amended, reported favorably — Do Pass.

SB 180—LS 6857/DI 97



January 19, 2018

Second Regular Session 120th General Assembly (2018)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2017 Regular Session of the General Assembly.

SENATE BILL No. 180

A BILL FOR AN ACT to amend the Indiana Code concerning business and other associations.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 23-0.5-1.5-16, AS ADDED BY P.L.118-2017,
2 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JANUARY 1, 2018 (RETROACTIVE)]; Sec. 16. "Interest" means:
4 (1) a share in a business corporation;
5 (2) a membership in a nonprofit corporation; or
6 (3) a governance interest or ~~distributional~~ **economic** interest in
7 any other type of unincorporated entity.
8 SECTION 2. IC 23-0.5-2-5, AS ADDED BY P.L.118-2017,
9 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
10 JANUARY 1, 2018 (RETROACTIVE)]; Sec. 5. (a) A person on whose
11 behalf a filed record was delivered to the secretary of state for filing
12 may correct the record if:
13 (1) the record at the time of filing was inaccurate;
14 (2) the record was defectively signed; or
15 (3) the electronic transmission of the record to the secretary of
16 state was defective.
17 (b) To correct a filed record, a person on whose behalf the record

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1 was delivered to the secretary of state must deliver to the secretary of
2 state for filing articles of correction.

3 (c) Articles of correction:

- 4 (1) may not state a delayed effective date;
5 (2) must be signed by the person correcting the filed record;
6 (3) must identify the filed record to be corrected;
7 (4) must specify the inaccuracy or defect to be corrected; and
8 (5) must correct the inaccuracy or defect.

9 (d) The articles of correction are effective:

10 **(1) except as described in subdivision (2)**, as of the effective
11 date of the filed record corrected by the articles of correction;
12 ~~except as to persons relying and~~

13 **(2) with respect to a person that:**

14 **(A) relies** on the uncorrected filed record; and

15 **(B) is** adversely affected by the correction;

16 ~~As to those persons, the articles of correction are effective when~~
17 ~~filed or when the reliance ceases to be reasonable, whichever~~
18 ~~occurs first.~~

19 SECTION 3. IC 23-0.5-2-6, AS ADDED BY P.L.118-2017,
20 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
21 JANUARY 1, 2018 (RETROACTIVE)]: Sec. 6. (a) The secretary of
22 state shall file an entity filing delivered to the secretary of state for
23 filing which satisfies this article. The duty of the secretary of state
24 under this section is ministerial.

25 (b) When the secretary of state files an entity filing, the secretary of
26 state shall record it as filed on the date and at the time of its delivery.
27 After filing an entity filing, the secretary of state shall deliver to the
28 person that submitted the filing an electronic copy of the filing with an
29 acknowledgment of the date and time of filing.

30 (c) If the secretary of state refuses to file an entity filing, the
31 secretary of state, not later than ten (10) business days after the filing
32 is delivered, shall:

33 (1) return the entity filing or notify the person that submitted the
34 filing of the refusal; and

35 (2) provide a brief explanation in a record of the reason for the
36 refusal.

37 (d) If the secretary of state refuses to file an entity filing, the person
38 that submitted the filing may petition the circuit or superior court of the
39 county where the entity's principal office (or, if none in Indiana, its
40 registered office) is or will be located to compel its filing. The filing
41 and the explanation of the secretary of state of the refusal to file must
42 be attached to the petition. The court may decide the matter in a



- 1 ~~summary~~ proceeding.
- 2 (e) The secretary of state's filing or refusing to file a document does
- 3 not:
- 4 (1) affect the validity or invalidity of the document in whole or in
- 5 part;
- 6 (2) relate to the correctness or incorrectness of information
- 7 contained in the document; or
- 8 (3) create presumption that the document is valid or invalid or
- 9 that information contained in the document is correct or incorrect.
- 10 SECTION 4. IC 23-0.5-2-8, AS ADDED BY P.L.118-2017,
- 11 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 12 JULY 1, 2018]: Sec. 8. (a) On request of any person, the secretary of
- 13 state shall issue a certificate of existence for a domestic filing entity or
- 14 **a certificate of registration** for a registered foreign entity.
- 15 (b) A certificate issued under subsection (a) must state:
- 16 (1) the domestic filing entity's name or the registered foreign
- 17 entity's name used in Indiana;
- 18 (2) in the case of a domestic filing entity:
- 19 (A) that its public organic record has been filed and has taken
- 20 effect;
- 21 (B) the date the public organic record became effective; and
- 22 (C) that the records of the secretary of state do not reflect that
- 23 the entity has been dissolved;
- 24 (3) in the case of a registered foreign entity, that it is registered to
- 25 do business in Indiana;
- 26 ~~(4) that all fees, taxes, interest, and penalties owed to Indiana by~~
- 27 ~~the domestic or foreign entity and collected by the secretary of~~
- 28 ~~state have been paid; if:~~
- 29 (A) payment is reflected in the records of the secretary of state;
- 30 and
- 31 ~~(B) nonpayment would affect the existence or registration of~~
- 32 ~~the domestic or foreign entity;~~
- 33 ~~(5) (4) that the most recent biennial report required by section 13~~
- 34 ~~of this chapter has been delivered to the secretary of state for~~
- 35 ~~filing; and~~
- 36 ~~(6) (5) that a proceeding is not pending under IC 23-0.5-5-11 or~~
- 37 ~~IC 23-0.5-6-2.~~
- 38 (c) Subject to any qualification stated in the certificate, a certificate
- 39 issued by the secretary of state under subsection (a) may be relied on
- 40 as conclusive evidence of the facts stated in the certificate.
- 41 (d) On the request from any person, the secretary of state shall issue
- 42 a certificate of fact for a domestic filing entity or registered foreign



1 entity. A certificate issued under this subsection must set forth any
 2 facts of record in the office of the secretary of state that may be
 3 requested by the applicant.

4 SECTION 5. IC 23-0.5-2-13, AS ADDED BY P.L.118-2017,
 5 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 6 JANUARY 1, 2018 (RETROACTIVE)]: Sec. 13. (a) A domestic filing
 7 entity or registered foreign entity shall deliver to the secretary of state
 8 for filing a biennial report that states:

9 (1) the name of the entity and, if a registered foreign entity, its
 10 jurisdiction of formation;

11 (2) ~~the name and street address of the entity's registered agent in~~
 12 ~~Indiana;~~ **the information required by IC 23-0.5-4-3(b);**

13 (3) the street address of the entity's principal office;

14 (4) for a corporation, the names and business addresses of its
 15 directors, secretary, and the highest executive office of the
 16 corporation; and

17 (5) for a nonprofit corporation, the names and business or resident
 18 addresses of its directors, secretary, and highest executive office.

19 (b) Information in a biennial report must be current as of the date
 20 the report is signed by the entity.

21 (c) The biennial report must be delivered to the secretary of state for
 22 filing every two (2) calendar years on a schedule determined by the
 23 secretary of state. The secretary of state may accept biennial reports
 24 during the ninety (90) days before the month in which the biennial
 25 report is due.

26 (d) If a biennial report does not contain the information required by
 27 this section, the secretary of state promptly shall notify the reporting
 28 entity in a record and return the report for correction. If the report is
 29 corrected to contain the information required by this section and
 30 delivered to the secretary of state within thirty (30) days after the
 31 effective date of notice, the report is considered to be timely filed.

32 (e) If a biennial report contains ~~the name or address of a registered~~
 33 ~~agent~~ **information required by IC 23-0.5-4-3(b)** which differs from
 34 the information shown in the records of the secretary of state
 35 immediately before the report becomes effective, the differing
 36 information is considered a statement of change under IC 23-0.5-4-7.

37 (f) A biennial report filed under this section may not specify a future
 38 effective date.

39 SECTION 6. IC 23-0.5-3-1, AS ADDED BY P.L.118-2017,
 40 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 41 JANUARY 1, 2018 (RETROACTIVE)]: Sec. 1. (a) Except as
 42 otherwise provided in subsection (d), after December 31, 2017, the



1 name under which a domestic filing entity may be formed, the name
 2 under which a foreign entity may register to do business in Indiana, a
 3 name reserved under section 3 of this chapter, or an assumed name
 4 registered under section 4 of this chapter must be distinguishable on
 5 the records of the secretary of state from any:

- 6 (1) name of an existing domestic filing entity;
 7 (2) name of a domestic filing entity that has not been
 8 administratively dissolved for more than one hundred twenty
 9 (120) days;
 10 (3) name of a foreign entity registered to do business in this state
 11 under IC 23-0.5-5;
 12 (4) name reserved under section 3 of this chapter, IC 23-1-23
 13 (before its repeal), IC 23-16-2-2 (before its repeal), IC 23-17-5
 14 (before its repeal), or IC 23-18-2-9 (before its repeal);
 15 (5) assumed name registered under IC 23-15-1-1(e) (before that
 16 chapter's repeal); or
 17 (6) assumed name registered under section 4(e) of this chapter.

18 (b) If an entity consents in a record to the use of its name by another
 19 entity and submits an undertaking in a form satisfactory to the secretary
 20 of state, to change its name to a name that is distinguishable on the
 21 records of the secretary of state from any name in any category of
 22 names in subsection (a); the name of the consenting entity may be used
 23 by the entity to which the consent was given. **Consent may not be**
 24 **given for the use of a reserved name.**

25 (c) Except as otherwise provided in subsection (d), in determining
 26 whether a name is the same as or not distinguishable on the records of
 27 the secretary of state from the name of another entity, words, phrases,
 28 or abbreviations indicating the type of entity, such as "corporation",
 29 "corp.", "incorporated", "Inc.", "company", "co", "professional
 30 corporation", "PC", "P.C.", "**professional service corporation**",
 31 "**PSC**", "**P.S.C.**", "Limited", "Ltd.", "limited partnership", "LP",
 32 "L.P.", "limited liability partnership", "LLP", "L.L.P.", "limited liability
 33 company", "LLC", or "L.L.C.", "**limited liability company-s**",
 34 "**LLC-s**", or "**L.L.C.-s**", may not be taken into account.

35 (d) An entity may consent in a record to the use of a name that is not
 36 distinguishable on the records of the secretary of state from its name
 37 except for the addition of a word, phrase, or abbreviation indicating the
 38 type of entity as provided in subsection (c). In such a case, the entity
 39 need not change its name under subsection (b). However, Consent is
 40 not needed in the following cases in which an entity's name is no longer
 41 **distinct distinguishable** on the records of the secretary of state from an
 42 assumed business name of another entity:



1 (1) In the case of an entity that files an entity filing that changes
 2 only the word, phrase, or abbreviation described in subsection (c)
 3 that indicates what type of entity the entity is.

4 (2) In the case of an entity that files its public organic record or
 5 certificate of registration using a name the entity has reserved
 6 under ~~section 3 of this chapter~~ **title before January 1, 2018.**

7 (3) In the case of an entity that files an application for
 8 reinstatement not more than one hundred twenty (120) days after
 9 the effective date of a dissolution under IC 23-0.5-6.

10 SECTION 7. IC 23-0.5-3-2, AS ADDED BY P.L.118-2017,
 11 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 12 JANUARY 1, 2018 (RETROACTIVE)]: Sec. 2. (a) The name of a
 13 business corporation **or nonprofit corporation** must contain the word
 14 "corporation", "incorporated", "company", or "limited", or the
 15 abbreviation "Corp.", "Inc.", "Co.", or "Ltd.", or words or abbreviations
 16 of similar import in another language. The name of a business
 17 corporation that is a professional corporation must contain the words
 18 "Professional Service Corporation" or "Professional Corporation" or
 19 abbreviations of these words. In addition, only a professional
 20 corporation in which all shareholders are physicians licensed under
 21 IC 25-22.5 may use the term "medical" in its corporate name. A
 22 licensing authority may by rule adopt further requirements than those
 23 specified in this subsection as to the names of professional corporations
 24 organized under this article.

25 (b) The name of a limited partnership must contain the words
 26 "limited partnership" or the abbreviation "L.P.". The name of a limited
 27 partnership may not contain the name of a limited partner unless:

28 (1) it is also the name of a general partner or the corporate name
 29 of a corporate general partner; or

30 (2) the business of the limited partnership had been carried on
 31 under that name before the admission of that limited partner.

32 (c) The name of a limited liability partnership must contain the
 33 phrase "limited liability partnership" or the abbreviation "L.L.P." or
 34 "LLP".

35 (d) The name of a limited liability company must contain the phrase
 36 "limited liability company" or the abbreviation "L.L.C." or "LLC". The
 37 name of a master limited liability company must comply with
 38 IC 23-18.1-6-7(b). The name of a series with limited liability must
 39 comply with IC 23-18.1-6-7(c) and IC 23-18.1-6-7(d).

40 (e) A filing entity may use the name, including an assumed name,
 41 of another filing entity if the filing entity proposing to use the name:

42 (1) has merged with the other filing entity that was already using



1 the name;

2 (2) has been formed by the reorganization of the other filing entity
3 that was already using the name; or

4 (3) has acquired all or substantially all of the assets, including the
5 name, of the other filing entity that was already using the name.

6 SECTION 8. IC 23-0.5-3-3, AS ADDED BY P.L.118-2017,
7 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
8 JANUARY 1, 2018 (RETROACTIVE)]: Sec. 3. (a) A person may
9 reserve the exclusive right to the use of a name by delivering an
10 electronic application to the secretary of state for filing. The application
11 must state the name and address of the applicant and the name to be
12 reserved, **excluding any word, phrase, or abbreviation described in**
13 **section 1(c) of this chapter.** If the secretary of state finds that the
14 name is available, the secretary of state shall reserve the name for the
15 applicant's exclusive use for renewable one hundred twenty (120) day
16 periods.

17 (b) The owner of a reserved entity name may transfer the reservation
18 to another person that is not an individual by delivering to the secretary
19 of state, electronically, a signed notice in a record of the transfer which
20 states the name and address of the transferee.

21 SECTION 9. IC 23-0.5-3-5, AS ADDED BY P.L.118-2017,
22 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
23 JANUARY 1, 2018 (RETROACTIVE)]: Sec. 5. (a) If a new filing or
24 an amendment changing the name of the filing entity is received by the
25 secretary of state and the new filing or the amendment contains "bank",
26 **or any derivative of "bank"**, in the filing entity's name, the filing
27 must be forwarded to the department of financial institutions for review
28 **of and a determination concerning whether** the use of the term
29 "bank" **(or the derivative) violates IC 28-1-20-4.**

30 (b) A document under subsection (a) may be filed by the secretary
31 of state only after the filing has been approved by the department of
32 financial institutions.

33 (c) The department of financial institutions shall review each filing
34 forwarded to the department of financial institutions under subsection
35 (a) and provide notice of the results of the review to the secretary of
36 state.

37 (d) If the department of financial institutions determines that a filing
38 entity has violated IC 28-1-20-4, the department of financial
39 institutions shall notify the secretary of state of the violation.

40 (e) The secretary of state shall commence a proceeding under this
41 section to administratively dissolve a filing entity if:

42 (1) the name of the filing entity contains the word, or a derivation



1 of the word, "bank", "banc", "banco", or "bankcor"; and

2 (2) the department of financial institutions determines that the
3 filing entity violates IC 28-1-20-4.

4 (f) If the secretary of state commences an administrative dissolution
5 under subsection (e), the secretary of state shall ~~serve~~ **provide to** the
6 filing entity ~~with~~ written notice of the determination under subsection
7 (e)(2). The secretary of state shall, at the same time notice is sent to the
8 filing entity, provide a copy of the notice to the department of financial
9 institutions.

10 (g) If a filing entity that receives a notice under subsection (f) does
11 not:

12 (1) correct the grounds for dissolution; or

13 (2) demonstrate to the reasonable satisfaction of the department
14 of financial institutions that the grounds for dissolution do not
15 exist;

16 at any time after sixty (60) days after ~~service~~ of the notice is ~~perfected~~;
17 **provided**, the department of financial institutions shall notify the
18 secretary of state in writing of the continuing violation. After receiving
19 the written notice from the department of financial institutions, the
20 secretary of state shall administratively dissolve the filing entity by
21 signing a certificate of **administrative** dissolution that recites the
22 grounds for dissolution and the effective date of the dissolution. The
23 secretary of state shall file the original certificate of **administrative**
24 dissolution and ~~serve~~ **provide** a copy of the certificate of
25 **administrative** dissolution ~~on to~~ the filing entity.

26 (h) A filing entity administratively dissolved under this section may
27 carry on only those activities necessary to wind up and liquidate the
28 filing entity's affairs.

29 (i) The filing entity may appeal the administrative dissolution to the
30 circuit court or superior court of the county:

31 (1) where the filing entity's principal office is located; or

32 (2) if the principal office is not located in Indiana, where the filing
33 entity's registered office is located;

34 not later than thirty (30) days after service of the notice of denial is
35 perfected.

36 (j) The court may do the following:

37 (1) Order the secretary of state to reinstate the dissolved filing
38 entity.

39 (2) Take other action the court considers appropriate.

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

42 (l) Dissolution under this section is in addition to any penalties



1 imposed upon the filing entity under IC 28-1-20-4(j), as well as any
2 other penalties under IC 28.

3 SECTION 10. IC 23-0.5-4-3, AS ADDED BY P.L.118-2017,
4 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
5 JANUARY 1, 2018 (RETROACTIVE)]: Sec. 3. (a) A registered agent
6 must be an individual, a general partnership, a domestic filing entity,
7 or a registered foreign entity.

8 (b) A registered agent filing must be signed by the represented
9 entity and state provide either:

10 (1) if the entity has a commercial registered agent, the name of
11 the entity's commercial registered agent; or

12 (2) if the entity does not have a commercial registered agent:

13 (A) the name or title, or position with the of the individual,
14 general partnership, domestic filing entity, or registered
15 foreign entity; and

16 (B) the address of the entity's noncommercial registered agent;
17 or and

18 (C) the electronic mail address of the registered agent at
19 which the registered agent will accept electronic service of
20 process only in the manner prescribed by the Indiana supreme
21 court in the Indiana trial rules.

22 (c) A registered agent filing must state:

23 (1) the registered agent's consent; or

24 (2) a representation that the registered agent has consented.

25 (d) Each entity registered under the laws of Indiana shall provide to
26 the entity's registered agent, and update from time to time as necessary,
27 the name, business address, and business telephone number of an
28 individual who is:

29 (1) an officer, a director, an employee, or a designated agent of
30 the entity; and

31 (2) authorized to receive communications from the registered
32 agent.

33 The individual is considered to be the communications contact for the
34 entity.

35 (e) A registered agent shall retain, in paper or electronic form, the
36 information provided by an entity under subsection (d).

37 (f) If an entity fails to provide the registered agent with the
38 information required under subsection (d), the registered agent may
39 resign, as provided in section 9 of this chapter, as the registered agent
40 for the entity.

41 SECTION 11. IC 23-0.5-4-8, AS ADDED BY P.L.118-2017,
42 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE



1 JANUARY 1, 2018 (RETROACTIVE)]: Sec. 8. (a) If a commercial
 2 registered agent changes its name, address, or electronic mail address
 3 as listed under section 4(a) of this chapter, type of entity, or jurisdiction
 4 of formation, the agent shall deliver to the secretary of state for filing
 5 a statement of change signed by the agent which states:

6 (1) the name of the agent as listed under section 4(a) of this
 7 chapter;

8 (2) if the name of the agent has changed, the new name;

9 (3) if the address or electronic mail address of the agent has
 10 changed, the new address or electronic mail address; and

11 (4) if the agent is an entity:

12 (A) if the type of entity of the agent has changed, the new type
 13 of entity; and

14 (B) if the jurisdiction of formation of the agent has changed,
 15 the new jurisdiction of formation.

16 (b) The filing by the secretary of state of a statement of change
 17 under subsection (a) is effective to change the information regarding
 18 the agent with respect to each entity represented by the agent.

19 (c) A commercial registered agent promptly shall furnish to each
 20 entity represented by it a notice in a record of the filing by the secretary
 21 of state of a statement of change relating to the name or address of the
 22 agent and the changes made in the statement.

23 (d) If a commercial registered agent changes its address without
 24 delivering for filing a statement of change as required by this section,
 25 the secretary of state may cancel the listing of the agent under section
 26 4 of this chapter. A cancellation under this subsection has the same
 27 effect as a termination under section 5 of this chapter. Promptly after
 28 canceling the listing of an agent, the secretary of state shall ~~serve~~
 29 **provide** notice in a record in the manner provided in section 10(b) or
 30 10(c) of this chapter on:

31 (1) each entity represented by the agent, stating that the agent has
 32 ceased to be the registered agent for the entity and that, until the
 33 entity designates a new registered agent, service of process may
 34 be made on the entity as provided in section 10 of this chapter;
 35 and

36 (2) the agent, stating that the listing of the agent has been
 37 canceled under this section.

38 SECTION 12. IC 23-0.5-4-9, AS ADDED BY P.L.118-2017,
 39 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 40 JANUARY 1, 2018 (RETROACTIVE)]: Sec. 9. (a) A registered agent
 41 may resign as agent for a represented entity by delivering to the
 42 secretary of state for filing a statement of resignation signed by the



- 1 agent which states:
- 2 (1) the name of the entity;
- 3 (2) the name of the agent;
- 4 (3) that the agent resigns from serving as registered agent for the
- 5 entity; and
- 6 (4) the address of the entity to which the agent will send the
- 7 notice required by subsection (c).
- 8 (b) A statement of resignation takes effect on the earlier of:
- 9 (1) the thirty-first day after the day on which it is filed by the
- 10 secretary of state; or
- 11 (2) the designation of a new registered agent for the represented
- 12 entity.
- 13 (c) A registered agent promptly shall furnish to the represented
- 14 entity notice in a record of the date on which a statement of resignation
- 15 was filed.
- 16 (d) When a statement of resignation takes effect, the person that
- 17 resigned ceases to have responsibility under this chapter for any matter
- 18 thereafter tendered to it as agent for the represented entity. The
- 19 resignation does not affect any contractual rights the entity has against
- 20 the agent or that the agent has against the entity.
- 21 (e) A registered agent may resign with respect to a represented
- 22 entity ~~whether or not regardless of the entity is in good standing.~~
- 23 **entity's status with the secretary of state.**
- 24 SECTION 13. IC 23-0.5-5-2, AS ADDED BY P.L.118-2017,
- 25 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 26 JANUARY 1, 2018 (RETROACTIVE)]: Sec. 2. (a) A foreign ~~filing~~
- 27 entity may not do business in Indiana until it registers with the
- 28 secretary of state under this article. However, this requirement does not
- 29 apply to foreign regulated entities.
- 30 (b) A foreign ~~filing~~ entity doing business in Indiana may not
- 31 maintain an action or proceeding in this state unless it is registered to
- 32 do business in Indiana.
- 33 (c) The failure of a foreign ~~filing~~ entity to register to do business in
- 34 Indiana does not impair the validity of a contract or act of the foreign
- 35 ~~filing~~ entity or preclude it from defending an action or proceeding in
- 36 Indiana.
- 37 (d) A limitation on the liability of an interest holder or governing
- 38 person of a foreign ~~filing~~ entity is not waived solely because the foreign
- 39 ~~filing~~ entity does business in Indiana without registering.
- 40 (e) Section 1(a) of this chapter applies to a foreign entity even if the
- 41 foreign entity fails to register under this chapter.
- 42 (f) A foreign ~~filing~~ entity is liable for a civil penalty of not more



1 than ten thousand dollars (\$10,000) if it transacts business in Indiana
 2 without a certificate of authority. The attorney general may collect all
 3 penalties due under this subsection.

4 SECTION 14. IC 23-0.5-5-3, AS ADDED BY P.L.118-2017,
 5 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 6 JANUARY 1, 2018 (RETROACTIVE)]: Sec. 3. To register to do
 7 business in Indiana, a foreign ~~filing~~ entity must deliver a foreign
 8 registration statement to the secretary of state for filing. The statement
 9 must be signed by the entity and state or be accompanied by:

10 (1) the name of the foreign ~~filing~~ entity and, if the name does not
 11 comply with IC 23-0.5-3-1, an alternate name adopted under
 12 section 6(a) of this chapter;

13 (2) the type of entity;

14 (3) the entity's jurisdiction of formation;

15 **(4) the date of formation in the jurisdiction described in**
 16 **subdivision (3);**

17 ~~(4)~~ **(5)** the street address of the entity's principal office;

18 ~~(5)~~ **(6)** the information required by IC 23-0.5-4-3(b);

19 ~~(6)~~ **(7)** if the entity is a nonprofit corporation, whether the
 20 corporation has members;

21 ~~(7)~~ **(8)** if the entity is a nonprofit corporation, whether the
 22 corporation, if the corporation had been incorporated in Indiana,
 23 would be a public benefit, mutual benefit, or religious
 24 corporation;

25 ~~(8)~~ **(9)** if the entity is a limited liability company and if the
 26 organizational documents of the entity provide for a manager or
 27 managers, a statement to that effect; and

28 ~~(9)~~ **(10)** a certificate of existence or similar document
 29 authenticated by the secretary of state or other official having
 30 custody of business records of the entity in the state or country
 31 where the entity was organized.

32 SECTION 15. IC 23-0.5-5-4, AS ADDED BY P.L.118-2017,
 33 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 34 JANUARY 1, 2018 (RETROACTIVE)]: Sec. 4. A registered foreign
 35 entity shall deliver to the secretary of state for filing an amendment to
 36 its foreign registration statement if there is a change in:

37 (1) the name of the entity;

38 (2) the entity's jurisdiction of formation;

39 (3) an address required by section ~~3(4)~~ **3(5)** of this chapter; or

40 (4) the information required by IC 23-0.5-4-3(b).

41 SECTION 16. IC 23-0.5-5-5, AS ADDED BY P.L.118-2017,
 42 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE



1 JANUARY 1, 2018 (RETROACTIVE)]: Sec. 5. (a) Activities of a
 2 foreign ~~filing~~ entity which do not constitute doing business in Indiana
 3 under this article include:

4 (1) maintaining, defending, mediating, arbitrating, or settling a
 5 action or proceeding;

6 (2) carrying on any activity concerning its internal affairs,
 7 including holding meetings of its interest holders or governing
 8 persons;

9 (3) maintaining accounts in financial institutions;

10 (4) maintaining offices or agencies for the transfer, exchange, and
 11 registration of securities of the entity or maintaining trustees or
 12 depositories with respect to those securities;

13 (5) selling through independent contractors;

14 (6) soliciting or obtaining orders by any means if the orders
 15 require acceptance outside Indiana before they become contracts;

16 (7) **making loans or otherwise** creating or acquiring
 17 indebtedness, mortgages, or security interests in **real or personal**
 18 property;

19 (8) securing or collecting debts or enforcing mortgages or security
 20 interests in property securing the debts, and holding, protecting,
 21 or maintaining property so acquired;

22 (9) conducting an isolated transaction completed within thirty
 23 (30) days that is not conducted in the course of repeated
 24 transactions of a like nature;

25 (10) owning, without more, property;

26 (11) doing business in interstate commerce; and

27 (12) if the entity is a nonprofit corporation, soliciting funds if
 28 otherwise authorized by Indiana law.

29 (b) A person does not do business in Indiana solely by being an
 30 interest holder or governing person of a foreign entity that does
 31 business in Indiana.

32 (c) This section does not apply in determining the contacts or
 33 activities that may subject a foreign ~~filing~~ entity to service of process,
 34 taxation, or regulation under law of Indiana other than this article.

35 (d) The list of activities in subsection (a) is not exhaustive and
 36 recodifies, not repeals, those activities previously listed in
 37 IC 23-1-49-1, IC 23-16-10-2, IC 23-17-26-1, and IC 23-18-11-2.

38 SECTION 17. IC 23-0.5-5-6, AS ADDED BY P.L.118-2017,
 39 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 40 JANUARY 1, 2018 (RETROACTIVE)]: Sec. 6. (a) A foreign ~~filing~~
 41 entity whose name does not comply with IC 23-0.5-3-1 for an entity of
 42 its type may not register to do business in Indiana until it adopts, for the



1 purpose of doing business in Indiana, an alternate name that complies
 2 with IC 23-0.5-3-1. A registered foreign entity that registers under an
 3 alternate name under this subsection need not comply with
 4 IC 23-0.5-3-4. After registering to do business in Indiana with an
 5 alternate name, a registered foreign entity shall do business in Indiana
 6 under:

7 (1) the alternate name; or

8 (2) a name the entity is authorized to use under IC 23-0.5-3-4.

9 (b) If a registered foreign entity changes its name to a name that
 10 does not comply with IC 23-0.5-3-1, it may not do business in Indiana
 11 until it complies with subsection (a) by amending its registration to
 12 adopt an alternate name that complies with IC 23-0.5-3-1.

13 SECTION 18. IC 23-0.5-5-7, AS ADDED BY P.L.118-2017,
 14 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 15 JANUARY 1, 2018 (RETROACTIVE)]: Sec. 7. (a) A registered
 16 foreign entity may withdraw its registration by delivering a statement
 17 of withdrawal to the secretary of state for filing. The statement of
 18 withdrawal must be signed by the entity and state:

19 (1) the name of the entity and its jurisdiction of formation;

20 (2) that the entity is not doing business in Indiana and that it
 21 withdraws its registration to do business in Indiana;

22 (3) that the entity revokes the authority of its registered agent to
 23 accept service **of process** on its behalf in Indiana;

24 (4) an address and electronic mail address to which service of
 25 process may be made under subsection (b); and

26 (5) a commitment to notify the secretary of state in the future of
 27 any change in its street or electronic mail address.

28 (b) After the withdrawal of the registration of an entity, service of
 29 process in any action or proceeding based on a cause of action arising
 30 during the time the entity was registered to do business in Indiana may
 31 be made under IC 23-0.5-4-10.

32 SECTION 19. IC 23-0.5-5-9, AS ADDED BY P.L.118-2017,
 33 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 34 JANUARY 1, 2018 (RETROACTIVE)]: Sec. 9. (a) A registered
 35 foreign entity that has dissolved and completed winding up or has
 36 converted to a domestic or foreign entity that is not a filing entity shall
 37 deliver a statement of withdrawal to the secretary of state for filing. The
 38 statement must be signed by the dissolved or converted entity and state:

39 (1) in the case of a foreign entity that has completed winding up:

40 (A) its name and jurisdiction of formation; and

41 (B) that the foreign entity surrenders its registration to do
 42 business in Indiana; and



1 (2) in the case of a foreign entity that has converted to a domestic
2 or foreign entity that is not a filing entity:

3 (A) the name of the converting foreign entity and its
4 jurisdiction of formation;

5 (B) the type of entity other than a filing entity to which it has
6 converted and its jurisdiction of formation;

7 (C) that it surrenders its registration to do business in Indiana
8 and revokes the authority of its registered agent to accept
9 service on its behalf; and

10 (D) a street or electronic mail address to which service of
11 process may be made under subsection (b).

12 (b) After a withdrawal under this section is effective, service of
13 process in any action or proceeding based on a cause of action arising
14 during the time the foreign ~~filing~~ entity was registered to do business
15 in Indiana may be made under IC 23-0.5-4-10.

16 SECTION 20. IC 23-0.5-5-11, AS ADDED BY P.L.118-2017,
17 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
18 JANUARY 1, 2018 (RETROACTIVE)]: Sec. 11. (a) The secretary of
19 state may ~~terminate revoke~~ the registration of a registered foreign
20 entity if:

21 (1) the entity does not pay, not later than sixty (60) days after the
22 due date, any fee, tax, interest, or penalty required to be paid to
23 the secretary of state under this article or law of Indiana other
24 than this article;

25 (2) the entity does not deliver to the secretary of state for filing,
26 not later than sixty (60) days after the due date, a biennial report;

27 (3) the entity does not have a registered agent as required by
28 IC 23-0.5-4-1;

29 (4) the entity does not deliver to the secretary of state for filing a
30 statement of change under IC 23-0.5-4-6 not later than thirty (30)
31 days after a change occurs in the name or address of the entity's
32 registered agent; or

33 (5) the secretary of state receives a duly authenticated certificate
34 from the secretary of state or other official having custody of
35 entity filings in the state or country under whose law the entity is
36 registered stating that it has been dissolved or disappeared as the
37 result of a merger.

38 (b) If the secretary of state determines that one (1) or more grounds
39 exists under subsection (a) for ~~termination revocation~~ of a registration,
40 the secretary of state shall ~~serve~~ **provide to** the foreign ~~corporation~~
41 **with entity** written notice of the determination, unless the secretary of
42 state:



- 1 (1) receives a receipt showing failure of **a previous attempt of**
 2 service of process upon the entity's registered agent at the address
 3 of the registered office; and
 4 (2) determines that the secretary of state's office has no record of
 5 the entity's principal office address.
- 6 (c) The notice under subsection (b) must state:
 7 (1) the effective date of the ~~termination~~, **revocation**, which must
 8 be at least sixty (60) days after the date the secretary of state
 9 delivers the copy; and
 10 (2) the grounds for ~~termination~~ **revocation** under subsection (a).
- 11 (d) The authority of a registered foreign entity to do business in
 12 Indiana ceases on the effective date of the notice of ~~termination~~
 13 **revocation** under subsection (b), unless before that date the entity
 14 cures each ground for ~~termination~~ **revocation** stated in the notice. If the
 15 entity cures each ground, the secretary of state shall file a record so
 16 stating.
- 17 (e) The secretary of state's ~~termination~~ **revocation** of a registration
 18 appoints the secretary of state the entity's agent for service of process
 19 in any proceeding based on a cause of action that arose during the time
 20 the entity was authorized to transact business in Indiana. Service of
 21 process on the secretary of state under this subsection is service on the
 22 entity. Upon receipt of process, the secretary of state shall mail a copy
 23 of the process to the ~~secretary of the~~ entity at its principal office shown
 24 in its most recent biennial report or in any subsequent communication
 25 received from the entity stating the current mailing address of its
 26 principal office, unless the secretary of state:
 27 (1) receives a receipt showing failure of **a previous attempt of**
 28 service of process upon the entity's registered agent at the address
 29 of the registered office; and
 30 (2) determines that the secretary of state's office has no record of
 31 the entity's principal office address.
- 32 (f) **Termination Revocation** of an entity's registration does not
 33 terminate the authority of the registered agent of the entity.
- 34 SECTION 21. IC 23-0.5-5-12, AS ADDED BY P.L.118-2017,
 35 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 36 JANUARY 1, 2018 (RETROACTIVE)]; Sec. 12. (a) An entity that has
 37 had its registration ~~terminated~~ **revoked** under section 11(b) of this
 38 chapter may, **not later than two (2) years after the effective date of**
 39 **the revocation**, apply to the secretary of state for reinstatement. The
 40 application for reinstatement must include all the following:
 41 (1) The name of the entity.
 42 (2) The effective date of the ~~termination~~ **revocation** of the entity's



- 1 registration.
- 2 (3) A statement that the ground or grounds for ~~termination~~
3 **revocation** of the entity's registration either did not exist or have
4 been eliminated.
- 5 (4) A statement that the entity's name satisfies the requirements
6 of IC 23-0.5-3-1 or section 6 of this chapter.
- 7 (5) A certificate from the department of state revenue stating that
8 all taxes owed by the entity have been paid.
- 9 (b) If the secretary of state determines that the application contains
10 the information required under subsection (a) and that the information
11 is correct, the secretary of state shall:
- 12 (1) cancel the certificate of ~~termination~~ **revocation** of the entity's
13 registration;
- 14 (2) prepare a certificate of reinstatement that ~~states:~~ **specifies:**
15 (A) that the ~~termination~~ **revocation** of the entity's registration
16 has been canceled; and
17 (B) the date that the reinstatement is effective; **and**
- 18 (3) file the original certificate of reinstatement. ~~and~~
19 ~~(4) serve a copy of the certificate of reinstatement on the entity.~~
- 20 (c) When the certificate of reinstatement is effective, the certificate
21 of reinstatement relates back to and is considered to take effect as of
22 the effective date of the ~~termination~~ **revocation** of the entity's
23 registration and the entity resumes carrying on its business as if the
24 ~~termination~~ **revocation** of the entity's registration had never occurred.
- 25 SECTION 22. IC 23-0.5-5-13, AS ADDED BY P.L.118-2017,
26 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
27 JANUARY 1, 2018 (RETROACTIVE)]: Sec. 13. (a) If the secretary of
28 state denies an entity's application for reinstatement under section 12(a)
29 and 12(b) of this chapter, the secretary of state shall serve the entity
30 with a written notice that explains the reason or reasons for denial.
- 31 (b) The entity may appeal the denial of reinstatement to the circuit
32 or superior court of the county in which its registered agent is located
33 not later than thirty (30) days after service of the ~~certificate of~~
34 **revocation denial of reinstatement** is perfected. The entity appeals by
35 petitioning the court to set aside the revocation and attaching to the
36 petition copies of all the following:
- 37 (1) The secretary of state's ~~certificate of revocation.~~ **notice of**
38 **revocation provided under section 11(b) of this chapter.**
- 39 (2) The entity's application for reinstatement described in section
40 12(a) of this chapter.
- 41 (3) The secretary of state's notice of denial described in
42 subsection (a).



1 (c) The court may order the secretary of state to reinstate the
 2 registration or may take any other action the court considers
 3 appropriate.

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

6 SECTION 23. IC 23-0.5-5-14, AS ADDED BY P.L.118-2017,
 7 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 8 JANUARY 1, 2018 (RETROACTIVE)]: Sec. 14. The attorney general
 9 may maintain an action to enjoin a foreign ~~filing~~ entity from doing
 10 business in Indiana in violation of this article.

11 SECTION 24. IC 23-0.5-6-2, AS ADDED BY P.L.118-2017,
 12 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 13 JANUARY 1, 2018 (RETROACTIVE)]: Sec. 2. (a) If the secretary of
 14 state determines that one (1) or more grounds exist under section 1 of
 15 this chapter for administratively dissolving an entity, the secretary of
 16 state shall ~~serve~~ **provide to** the entity ~~with~~ written notice of the
 17 determination unless the secretary of state:

18 (1) receives a receipt showing failure of **a previous attempt of**
 19 service of process upon the entity's registered agent at the address
 20 of the registered office; and

21 (2) determines that the secretary of state's office has no record of
 22 the filing entity's principal office address.

23 (b) If a domestic filing entity, not later than sixty (60) days after
 24 ~~service of receiving~~ the notice ~~required by provided under~~ subsection
 25 (a), does not cure or demonstrate to the satisfaction of the secretary of
 26 state the nonexistence of each ground determined by the secretary of
 27 state, the secretary of state shall administratively dissolve the entity by
 28 signing a ~~statement certificate~~ of administrative dissolution that recites
 29 the grounds for dissolution and the effective date of dissolution. The
 30 secretary of state shall file the ~~statement certificate~~ and ~~serve provide~~
 31 **to the entity** a copy ~~on the entity under IC 23-0.5-4-10. of the~~
 32 **certificate.**

33 (c) A domestic filing entity that is dissolved administratively
 34 continues its existence as the same type of entity but may not carry on
 35 any activities except as necessary to wind up its activities and affairs
 36 and liquidate its assets in the manner provided in its organic law or to
 37 apply for reinstatement under section 3 of this chapter.

38 (d) The administrative dissolution of a domestic filing entity does
 39 not terminate the authority of its registered agent.

40 SECTION 25. IC 23-0.5-6-3, AS ADDED BY P.L.118-2017,
 41 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 42 JANUARY 1, 2018 (RETROACTIVE)]: Sec. 3. (a) A domestic filing



1 entity that is dissolved administratively under **IC 23-1-6 (before its**
 2 **repeal), IC 23-17-23 (before its repeal), IC 23-18-10-4 (before its**
 3 **repeal), or** section 2 of this chapter may apply to the secretary of state
 4 for reinstatement not later than two (2) years after the effective date of
 5 dissolution. The application must be signed by the entity and state or
 6 contain:

7 (1) the name of the entity at the time of its administrative
 8 dissolution and, if needed, a different name that satisfies
 9 IC 23-0.5-3-1;

10 (2) the street address of the principal office of the entity and the
 11 name and address of its registered agent;

12 (3) the effective date of the entity's administrative dissolution;

13 (4) that the grounds for dissolution did not exist or have been
 14 cured; and

15 (5) a certificate of clearance from the department of state revenue
 16 reciting that taxes owed by the entity have been paid.

17 (b) To be reinstated, an entity must pay all fees, taxes, interest, and
 18 penalties that were due to the secretary of state at the time of the
 19 entity's administrative dissolution and all fees, taxes, interest, and
 20 penalties that would have been due to the secretary of state while the
 21 entity was dissolved administratively.

22 (c) If the secretary of state determines that an application under
 23 subsection (a) contains the required information, is satisfied that the
 24 information is correct, and determines that all payments required to be
 25 made to the secretary of state by subsection (b) have been made, the
 26 secretary of state shall:

27 (1) cancel the ~~statement~~ **certificate** of administrative dissolution
 28 and prepare a ~~statement~~ **certificate** of reinstatement that states the
 29 secretary of state's determination and the effective date of
 30 reinstatement; **and**

31 (2) file the ~~statement~~ **certificate** of reinstatement. ~~and~~

32 ~~(3) serve a copy on the entity.~~

33 (d) When reinstatement under this section is effective, the following
 34 rules apply:

35 (1) The reinstatement relates back to and takes effect as of the
 36 effective date of the administrative dissolution.

37 (2) The domestic filing entity resumes carrying on its activities
 38 and affairs as if the administrative dissolution had never occurred.

39 (3) The rights of a person arising out of an act or omission in
 40 reliance on the dissolution before the person knew or had notice
 41 of the reinstatement are not affected.

42 SECTION 26. IC 23-0.5-6-4, AS ADDED BY P.L.118-2017,



1 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
2 JANUARY 1, 2018 (RETROACTIVE)]: Sec. 4. (a) If the secretary of
3 state denies a domestic filing entity's application for reinstatement
4 following administrative dissolution, the secretary of state shall serve
5 the entity with a notice in a record that explains the reasons for denial.

6 (b) An entity may seek judicial review of denial of reinstatement in
7 the circuit or superior court of the county where the entity's principal
8 office (or, if none in Indiana, its registered office) is located not later
9 than thirty (30) days after service of the notice of denial.

10 (c) An entity appeals by petitioning the court to set aside the
11 dissolution and attaching to the petition copies of the following:

12 (1) The secretary of state's certificate of **administrative**
13 dissolution.

14 (2) The filing entity's application for reinstatement.

15 (3) The secretary of state's notice of denial.

16 (d) The court may do the following:

17 (1) Order the secretary of state to reinstate the entity.

18 (2) Take other action the court considers appropriate.

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

21 SECTION 27. IC 23-0.5-7-4, AS ADDED BY P.L.118-2017,
22 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
23 JANUARY 1, 2018 (RETROACTIVE)]: Sec. 4. The secretary of state
24 may:

25 (1) remove fraudulent filings from the secretary of state's record
26 for the entity; or

27 (2) administratively dissolve or ~~terminate~~ **revoke** the registration;
28 for failure to timely and adequately respond to interrogatories under
29 section 3 of this chapter.

30 SECTION 28. IC 23-0.5-9-41, AS ADDED BY P.L.118-2017,
31 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
32 JANUARY 1, 2018 (RETROACTIVE)]: Sec. 41. ~~(a) The secretary of~~
33 ~~state shall collect the following fees~~ **There is no fee** for filing a
34 cancellation of assumed business name. ~~electronically:~~

35 ~~(1) In the case of a for-profit entity, twenty dollars (\$20)~~
36 ~~multiplied by the number of assumed business names canceled by~~
37 ~~the filing entity.~~

38 ~~(2) In the case of a nonprofit corporation, ten dollars (\$10);~~
39 ~~multiplied by the number of assumed business names canceled by~~
40 ~~the nonprofit corporation.~~

41 (b) The secretary of state shall collect the following fees for filing
42 a cancellation of assumed business name in a manner other than



- 1 electronically:
- 2 (1) In the case of a for-profit entity, thirty dollars (\$30) multiplied
- 3 by the number of assumed business names canceled by the filing
- 4 entity:
- 5 (2) In the case of a nonprofit corporation, twenty-six dollars (\$26)
- 6 multiplied by the number of assumed business names canceled by
- 7 the nonprofit corporation:
- 8 SECTION 29. IC 23-0.5-9-42, AS ADDED BY P.L.118-2017,
- 9 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 10 JANUARY 1, 2018 (RETROACTIVE)]: Sec. 42. The secretary of state
- 11 shall collect the following fees for filing an application for
- 12 reinstatement following administrative dissolution or ~~termination:~~
- 13 **revocation:**
- 14 (1) Twenty dollars (\$20) for an electronic filing.
- 15 (2) Thirty dollars (\$30) for filing in a manner other than
- 16 electronically.
- 17 SECTION 30. IC 23-0.6-1-3, AS ADDED BY P.L.118-2017,
- 18 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 19 JANUARY 1, 2018 (RETROACTIVE)]: Sec. 3. (a) A domestic or
- 20 foreign entity that is required to give notice to, or obtain the approval
- 21 of, a governmental agency or officer **under the law of Indiana** in order
- 22 to be a party to a merger must give the notice or obtain the approval in
- 23 order to be a party to an interest exchange, conversion, or
- 24 domestication.
- 25 (b) Property held for a charitable purpose under the law of Indiana
- 26 by a domestic or foreign entity immediately before a transaction under
- 27 this article becomes effective may not, as a result of the transaction, be
- 28 diverted from the objects for which it was donated, granted, or devised
- 29 unless, to the extent required by or pursuant to the law of Indiana
- 30 concerning cy pres or other law dealing with nondiversion of charitable
- 31 assets, the entity obtains an appropriate order specifying the disposition
- 32 of the property from a court having jurisdiction over the matter.
- 33 SECTION 31. IC 23-0.6-1.5-4, AS ADDED BY P.L.118-2017,
- 34 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 35 JANUARY 1, 2018 (RETROACTIVE)]: Sec. 4. "Approve" means, in
- 36 the case of an entity, for its ~~governors governing persons~~ and interest
- 37 holders to take whatever steps are necessary under its organic rules,
- 38 organic law, and other law to:
- 39 (1) propose a transaction subject to this article;
- 40 (2) adopt and approve the terms and conditions of the transaction;
- 41 and
- 42 (3) conduct any required proceedings or otherwise obtain any



- 1 required votes or consents of the **governors governing persons** or
 2 interest holders.
- 3 SECTION 32. IC 23-0.6-1.5-19, AS ADDED BY P.L.118-2017,
 4 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 5 JANUARY 1, 2018 (RETROACTIVE)]: Sec. 19. "Organic law" refers
 6 to the following:
- 7 (1) The law of an entity's jurisdiction of formation governing the
 8 internal affairs of the entity.
- 9 (2) IC 23-1-40 for a domestic business corporation engaged in a
 10 transaction under this article.
- 11 (3) ~~IC 23-17-9~~ **IC 23-17-19** for a domestic nonprofit corporation
 12 engaged in a transaction under this article.
- 13 SECTION 33. IC 23-0.6-1.5-25, AS ADDED BY P.L.118-2017,
 14 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 15 JANUARY 1, 2018 (RETROACTIVE)]: Sec. 25. "Surviving entity"
 16 means the entity that continues in existence after ~~or is created by~~
 17 a merger under IC 23-0.6-2.
- 18 SECTION 34. IC 23-0.6-2-1, AS ADDED BY P.L.118-2017,
 19 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 20 JANUARY 1, 2018 (RETROACTIVE)]: Sec. 1. (a) Except as
 21 otherwise provided in this section, by complying with this chapter:
- 22 (1) one (1) or more domestic entities may merge with one (1) or
 23 more domestic or foreign entities into a domestic or foreign
 24 surviving entity; and
- 25 (2) two (2) or more foreign entities may merge into a domestic
 26 entity.
- 27 (b) Except as otherwise provided in this section, by complying with
 28 the provisions of this chapter applicable to foreign entities, a foreign
 29 entity may be a party to a merger under this chapter or may be the
 30 surviving entity in such a merger if the merger is authorized by the law
 31 of the foreign entity's jurisdiction of formation.
- 32 (c) A merger between or among domestic or foreign business
 33 corporations is governed by IC 23-1-40 and not this chapter.
- 34 (d) A merger involving domestic or foreign nonprofit corporations
 35 is governed by ~~IC 23-17-9~~ **IC 23-17-19** and not this chapter.
- 36 SECTION 35. IC 23-0.6-2-5, AS ADDED BY P.L.118-2017,
 37 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 38 JANUARY 1, 2018 (RETROACTIVE)]: Sec. 5. (a) Articles of merger
 39 must be signed by each merging entity and delivered to the secretary
 40 of state for filing.
- 41 (b) Articles of merger must contain:
- 42 (1) the name, jurisdiction of formation, and type of entity of each



- 1 merging entity that is not the surviving entity;
 2 (2) the name, jurisdiction of formation, and type of entity of the
 3 surviving entity;
 4 (3) if the articles of merger are not effective upon filing, the later
 5 date and time on which the articles of merger will become
 6 effective, which may not be more than ninety (90) days after the
 7 date of filing;
 8 (4) a statement that the merger was approved by each domestic
 9 merging entity, if any, in accordance with this chapter and by each
 10 foreign merging entity, if any, in accordance with the law of its
 11 jurisdiction of formation;
 12 (5) if the surviving entity is a domestic filing entity, any
 13 amendment to its public organic record approved as part of the
 14 plan of merger; and
 15 (6) if the surviving entity is a foreign entity that is not a registered
 16 foreign entity, a mailing address **and an electronic mail address**
 17 to which the secretary of state may send any process served on the
 18 secretary of state under section 6(e) of this chapter.
- 19 (c) In addition to the requirements of subsection (b), articles of
 20 merger may contain any other provision not prohibited by law.
- 21 (d) If the surviving entity is a domestic entity, its public organic
 22 record, if any, must satisfy the requirements of the law of Indiana,
 23 except that the public organic record does not need to be signed and
 24 may omit any provision that is not required to be included in a
 25 restatement of the public organic record.
- 26 (e) A plan of merger that is signed by all the merging entities and
 27 meets all the requirements of subsection (b) may be delivered to the
 28 secretary of state for filing instead of articles of merger and on filing
 29 has the same effect. If a plan of merger is filed as provided in this
 30 subsection, references in this article to articles of merger refer to the
 31 plan of merger filed under this subsection.
- 32 (f) Articles of merger are effective on the date and time of filing or
 33 the later date and time specified in the articles of merger.
- 34 (g) If the surviving entity is a domestic entity, the merger becomes
 35 effective when the articles of merger are effective. If the surviving
 36 entity is a foreign entity, the merger becomes effective on the later of:
 37 (1) the date and time provided by the organic law of the surviving
 38 entity; or
 39 (2) when the articles of merger are effective.
- 40 (h) The surviving entity resulting from a merger may, after the
 41 merger has become effective, file for record with the county recorder
 42 of each county in Indiana in which the entity has real property at the



1 time of the merger, the title to which will be transferred by the merger,
 2 a file-stamped copy of the articles of merger. If the articles of merger
 3 set forth amendments to the articles of incorporation of the surviving
 4 corporation that change its entity name, a file-stamped copy of the
 5 articles of merger may be filed for record with the county recorder of
 6 each county in Indiana in which the surviving ~~or acquiring~~ entity has
 7 any real property at the time the merger becomes effective. A failure to
 8 record a copy of the articles of merger under this subsection does not
 9 affect the validity of the merger or the change in corporate name.

10 SECTION 36. IC 23-0.6-4-5, AS ADDED BY P.L.118-2017,
 11 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 12 JANUARY 1, 2018 (RETROACTIVE)]: Sec. 5. (a) Articles of
 13 conversion must be signed by the converting entity and delivered to the
 14 secretary of state for filing.

15 (b) Articles of conversion must contain:

16 (1) the name, jurisdiction of organization, and type of the
 17 converting entity;

18 (2) the name (which must satisfy the requirements of applicable
 19 law), jurisdiction of organization, and type of the converted entity;

20 (3) if the articles of conversion are not to be effective upon filing,
 21 the later date and time on which it will become effective, which
 22 may not be more than ninety (90) days after the date of filing;

23 (4) if the converting entity is a domestic entity, a statement that
 24 the plan of conversion was approved in accordance with this
 25 article or, if the converting entity is a foreign entity, a statement
 26 that the conversion was approved by the foreign entity in
 27 accordance with the law of its jurisdiction of formation;

28 (5) if the converted entity is a domestic filing entity, its public
 29 organic record, as an attachment; and

30 (6) if the converted entity is a foreign entity, a mailing address
 31 **and an electronic mail address** to which the secretary of state
 32 may send any process served on the secretary of state under
 33 section 6(e) of this chapter.

34 (c) In addition to the requirements of subsection (b), articles of
 35 conversion may contain any other provision not prohibited by law.

36 (d) If the converted entity is a domestic entity, its public organic
 37 record, if any, must satisfy the requirements of the law of this state,
 38 except that the public organic record does not need to be signed and
 39 may omit any provision that is not required to be included in a
 40 restatement of the public organic record.

41 (e) A plan of conversion that is signed by a domestic converting
 42 entity and meets all the requirements of subsection (b) may be



1 delivered to the secretary of state for filing instead of articles of
 2 conversion and on filing has the same effect. If a plan of conversion is
 3 filed as provided in this subsection, references in this article to articles
 4 of conversion refer to the plan of conversion filed under this
 5 subsection.

6 (f) Articles of conversion are effective upon the date and time of
 7 filing or the later date and time specified in the articles of conversion.

8 (g) If the converted entity is a domestic entity, the conversion
 9 becomes effective when the articles of conversion are effective. If the
 10 converted entity is a foreign entity, the conversion becomes effective
 11 on the later of:

12 (1) the date and time provided by the organic law of the converted
 13 entity; or

14 (2) when the articles of conversion are effective.

15 SECTION 37. IC 23-0.6-5-5, AS ADDED BY P.L.118-2017,
 16 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 17 JANUARY 1, 2018 (RETROACTIVE)]: Sec. 5. (a) Articles of
 18 domestication must be signed by the domesticating entity and delivered
 19 to the secretary of state for filing.

20 (b) Articles of domestication must contain:

21 (1) the name, jurisdiction of formation, and type of entity of the
 22 domesticating entity;

23 (2) the name (which must satisfy the requirements of applicable
 24 law) and jurisdiction of formation of the domesticated entity;

25 (3) if the articles of domestication are not to be effective upon
 26 filing, the later date and time on which the articles of
 27 domestication will become effective, which may not be more than
 28 ninety (90) days after the date of filing;

29 (4) if the domesticating entity is a domestic entity, a statement
 30 that the plan of domestication was approved in accordance with
 31 this article or, if the domesticating entity is a foreign entity, a
 32 statement that the domestication was approved in accordance with
 33 the law of its jurisdiction of formation;

34 (5) if the domesticated entity is a domestic filing entity, its public
 35 organic record, as an attachment; and

36 (6) if the domesticated entity is a foreign entity that is not a
 37 registered foreign entity, a mailing address **and an electronic**
 38 **mail address** to which the secretary of state may send any process
 39 served on the secretary of state pursuant to section 6(e) of this
 40 chapter.

41 (c) In addition to the requirements of subsection (b), articles of
 42 domestication may contain any other provision not prohibited by law.



1 (d) If the domesticated entity is a domestic entity, its public organic
 2 record, if any, must satisfy the requirements of the law of this state, but
 3 the public organic record does not need to be signed and may omit any
 4 provision that is not required to be included in a restatement of the
 5 public organic record.

6 (e) A plan of domestication that is signed by a domesticating
 7 domestic entity and meets all the requirements of subsection (b) may
 8 be delivered to the secretary of state for filing instead of articles of
 9 domestication and on filing has the same effect. If a plan of
 10 domestication is filed as provided in this subsection, references in this
 11 article to articles of domestication refer to the plan of domestication
 12 filed under this subsection.

13 (f) Articles of domestication are effective on the date and time of
 14 filing or the later date and time specified in the articles of
 15 domestication.

16 (g) A domestication in which the domesticated entity is a domestic
 17 entity becomes effective when the articles of domestication are
 18 effective. A domestication in which the domesticated entity is a foreign
 19 entity becomes effective on the later of:

- 20 (1) the date and time provided by the organic law of the
 21 domesticated entity; or
 22 (2) when the articles of domestication become effective.

23 SECTION 38. IC 23-1-21-1 IS AMENDED TO READ AS
 24 FOLLOWS [EFFECTIVE JANUARY 1, 2018 (RETROACTIVE)]:
 25 Sec. 1. One (1) or more persons may act as the incorporator or
 26 incorporators of a corporation by ~~signing and causing to be delivered~~
 27 **the person's name to be listed on the** articles of incorporation **and**
 28 **having the articles of incorporation provided** to the secretary of state
 29 for filing.

30 SECTION 39. IC 23-1.5-2-9.1 IS ADDED TO THE INDIANA
 31 CODE AS A NEW SECTION TO READ AS FOLLOWS
 32 [EFFECTIVE JANUARY 1, 2018 (RETROACTIVE)]: **Sec. 9.1. The**
 33 **secretary of state may issue a certificate of incorporation under**
 34 **this article if the articles of incorporation:**

35 **(1) meet the requirements of all of the following:**

- 36 **(A) IC 23-1-21-2;**
 37 **(B) IC 23-0.5-3, with respect to names; and**
 38 **(C) this article; and**

39 **(2) include any other information required by the secretary of**
 40 **state to determine proper licensure or qualification of the**
 41 **proposed corporation or shareholders of the proposed**
 42 **corporation to incorporate under state law.**



1 SECTION 40. IC 23-1.5-2-11.1 IS AMENDED TO READ AS
 2 FOLLOWS [EFFECTIVE JANUARY 1, 2018 (RETROACTIVE)]:
 3 Sec. 11.1. A professional corporation must file a biennial report under
 4 ~~IC 23-1.5-2-11.1~~ **IC 23-0.5-2-13.**

5 SECTION 41. IC 23-1.5-3-6.1 IS ADDED TO THE INDIANA
 6 CODE AS A NEW SECTION TO READ AS FOLLOWS
 7 [EFFECTIVE JANUARY 1, 2018 (RETROACTIVE)]: **Sec. 6.1. (a) A**
 8 **professional corporation shall notify the secretary of state of a**
 9 **change:**

10 (1) **in the ownership of any share in the professional**
 11 **corporation; or**

12 (2) **to the professional corporation's business address;**
 13 **not more than thirty (30) days after the date on which the change**
 14 **occurs.**

15 (b) **The notice of change in ownership described in subsection**
 16 **(a) must include the name and post office address of the transferor**
 17 **shareholder and the transferee shareholder.**

18 (c) **The notice of change in business address described in**
 19 **subsection (a) must include the street address of the previous**
 20 **location and the street address of the new location of the**
 21 **professional corporation.**

22 SECTION 42. IC 23-1.5-5-1, AS AMENDED BY P.L.118-2017,
 23 SECTION 31, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 24 JANUARY 1, 2018 (RETROACTIVE)]: Sec. 1. (a) A foreign
 25 professional corporation desiring to be admitted to render professional
 26 services in Indiana must:

27 (1) **comply with IC 23-0.5-5; and**

28 (2) **comply with this article;**

29 (3) **comply with the name requirements of IC 23-0.5-3; and**

30 (4) **provide any information required by the secretary of state**
 31 **to determine proper licensure or qualification of the foreign**
 32 **corporation or shareholders of the foreign corporation to**
 33 **transact business in Indiana.**

34 (b) **IC 23-0.5-5-7 applies to the foreign professional corporation.**

35 SECTION 43. IC 23-17-3-1 IS AMENDED TO READ AS
 36 FOLLOWS [EFFECTIVE JANUARY 1, 2018 (RETROACTIVE)]:
 37 Sec. 1. At least one (1) person may act as the incorporator of a
 38 corporation by ~~signing and delivering~~ **causing the person's name to**
 39 **be listed on the** articles of incorporation **and having the articles of**
 40 **incorporation provided** to the secretary of state for filing.

41 SECTION 44. IC 23-17-19-4 IS AMENDED TO READ AS
 42 FOLLOWS [EFFECTIVE JANUARY 1, 2018 (RETROACTIVE)]:



1 Sec. 4. (a) After a plan of merger is approved by the board of directors
 2 and if required by section 3 of this chapter by the members and any
 3 other persons, the surviving or acquiring corporation shall deliver to
 4 the secretary of state articles of merger setting forth the following:

5 (1) The **plan of name of the surviving corporation following**
 6 **the merger.**

7 (2) If approval of members was not required, a statement to that
 8 effect and a statement that the plan was approved by a sufficient
 9 vote of the board of directors.

10 (3) If approval by members was required, the following:

11 (A) The designation, number of memberships outstanding,
 12 number of votes entitled to be cast by each class entitled to
 13 vote separately on the plan, and number of votes of each class
 14 indisputably voting on the plan.

15 (B) Either the total number of votes cast for and against the
 16 plan by each class entitled to vote separately on the plan or the
 17 total number of undisputed votes cast for the plan by each
 18 class and a statement that the number cast for the plan by each
 19 class was sufficient for approval by that class.

20 (4) If approval of the plan by a person other than the members or
 21 the board of directors is required under section 3(a)(3) of this
 22 chapter, a statement that the approval was obtained.

23 (b) Unless a delayed effective date is specified, a merger takes effect
 24 when the articles of merger are filed.

25 (c) The surviving corporation resulting from a merger may, after the
 26 merger has become effective, file for record with the county recorder
 27 of each county in Indiana in which a merging corporation has real
 28 property at the time of the merger, the title to which will be transferred
 29 by the merger, a file-stamped copy of the articles of merger. If the plan
 30 of merger sets forth amendments to the articles of incorporation of the
 31 surviving corporation that change the surviving corporation's corporate
 32 name, a file-stamped copy of the articles of merger may be filed for
 33 record with the county recorder of each county in Indiana in which the
 34 surviving corporation has real property at the time the merger becomes
 35 effective. A failure to record a copy of the articles of merger under this
 36 subsection does not affect the validity of the merger or the change in
 37 corporate name.

38 **SECTION 45. An emergency is declared for this act.**



COMMITTEE REPORT

Madam President: The Senate Committee on Judiciary, to which was referred Senate Bill No. 180, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Replace the effective date in SECTION 4 with "[EFFECTIVE JULY 1, 2018]".

Page 4, between lines 4 and 5, begin a new paragraph and insert:

"SECTION 5. IC 23-0.5-2-13, AS ADDED BY P.L.118-2017, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2018 (RETROACTIVE)]: Sec. 13. (a) A domestic filing entity or registered foreign entity shall deliver to the secretary of state for filing a biennial report that states:

- (1) the name of the entity and, if a registered foreign entity, its jurisdiction of formation;
- (2) ~~the name and street address of the entity's registered agent in Indiana;~~ **the information required by IC 23-0.5-4-3(b);**
- (3) the street address of the entity's principal office;
- (4) for a corporation, the names and business addresses of its directors, secretary, and the highest executive office of the corporation; and
- (5) for a nonprofit corporation, the names and business or resident addresses of its directors, secretary, and highest executive office.

(b) Information in a biennial report must be current as of the date the report is signed by the entity.

(c) The biennial report must be delivered to the secretary of state for filing every two (2) calendar years on a schedule determined by the secretary of state. The secretary of state may accept biennial reports during the ninety (90) days before the month in which the biennial report is due.

(d) If a biennial report does not contain the information required by this section, the secretary of state promptly shall notify the reporting entity in a record and return the report for correction. If the report is corrected to contain the information required by this section and delivered to the secretary of state within thirty (30) days after the effective date of notice, the report is considered to be timely filed.

(e) If a biennial report contains ~~the name or address of a registered agent~~ **information required by IC 23-0.5-4-3(b)** which differs from the information shown in the records of the secretary of state immediately before the report becomes effective, the differing information is considered a statement of change under IC 23-0.5-4-7.



(f) A biennial report filed under this section may not specify a future effective date."

Page 4, line 38, after "'P.C.," insert **"professional service corporation", "PSC", "P.S.C.",**".

Page 5, between lines 16 and 17, begin a new paragraph and insert:
 "SECTION 7. IC 23-0.5-3-2, AS ADDED BY P.L.118-2017, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2018 (RETROACTIVE)]: Sec. 2. (a) The name of a business corporation **or nonprofit corporation** must contain the word "corporation", "incorporated", "company", or "limited", or the abbreviation "Corp.", "Inc.", "Co.", or "Ltd.", or words or abbreviations of similar import in another language. The name of a business corporation that is a professional corporation must contain the words "Professional Service Corporation" or "Professional Corporation" or abbreviations of these words. In addition, only a professional corporation in which all shareholders are physicians licensed under IC 25-22.5 may use the term "medical" in its corporate name. A licensing authority may by rule adopt further requirements than those specified in this subsection as to the names of professional corporations organized under this article.

(b) The name of a limited partnership must contain the words "limited partnership" or the abbreviation "L.P.". The name of a limited partnership may not contain the name of a limited partner unless:

(1) it is also the name of a general partner or the corporate name of a corporate general partner; or

(2) the business of the limited partnership had been carried on under that name before the admission of that limited partner.

(c) The name of a limited liability partnership must contain the phrase "limited liability partnership" or the abbreviation "L.L.P." or "LLP".

(d) The name of a limited liability company must contain the phrase "limited liability company" or the abbreviation "L.L.C." or "LLC". The name of a master limited liability company must comply with IC 23-18.1-6-7(b). The name of a series with limited liability must comply with IC 23-18.1-6-7(c) and IC 23-18.1-6-7(d).

(e) A filing entity may use the name, including an assumed name, of another filing entity if the filing entity proposing to use the name:

(1) has merged with the other filing entity that was already using the name;

(2) has been formed by the reorganization of the other filing entity that was already using the name; or

(3) has acquired all or substantially all of the assets, including the



name, of the other filing entity that was already using the name."

Page 19, line 32, delete "state".

Page 19, line 32, after "officer" insert "**under the law of Indiana**".

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 180 as introduced.)

BRAY, Chairperson

Committee Vote: Yeas 8, Nays 0.

