
SECRETARY OF STATE (SOS)

- Removes the requirement for the Secretary of State to compile and publish specified numbers of nonelectronic copies of election statistics and official rosters of officers.
- Requires the Secretary of State to charge a filing fee for multiple agents' change filings.
- Creates the Information Systems Fund in the state treasury for the information technology related expenses of the Secretary of State's office.
- Creates the Help America Vote Act (HAVA) Fund in the state treasury, and specifies that HAVA moneys received by the Secretary of State from the U.S. Election Assistance Commission are to be credited to the fund and used for activities conducted pursuant to HAVA.
- Creates the Election Reform/Health and Human Services Fund in the state treasury, and specifies that HAVA moneys received by the Secretary of State from the U.S. Department of Health and Human Services are to be credited to the fund and used to assure access for disabled individuals.
- Establishes a privately funded Citizen Education Fund in the state treasury, and requires the Secretary of State to use moneys in the fund for preparing, printing, and distributing voter registration and educational materials and for conducting related workshops and conferences.
- Eliminates the Secretary of State's duty to publish and distribute the session laws in a bound format and provides for more flexible publishing and distribution requirements.
- Abolishes the Secretary of State Business Technology Fund.
- Requires the Secretary of State to use ordinary or electronic mail instead of certified mail or notices sent "in writing" to give businesses certain notices.
- Harmonizes inconsistent filing fee statutes by referencing the statute specifying fees to be charged by the Secretary.
- Increases from \$1,800 to \$2,400 the fee that must be paid by a voting machine vendor in order to have the Board of Voting Machine Examiners test the voting equipment for possible certification in Ohio.



- Allows a nonprofit corporation that is formed under Ohio law to convert into another, specified entity, if the conversion is also permitted by the law under which the converted entity would exist.
- Defines "entity," as used in the Nonprofit Corporation Law.
- Expands the definition of "entity," as used in the Limited Liability Company Law, to include nonprofit corporations.

Election statistics and official rosters of federal, state, county, township, and municipal officers

(R.C. 111.12)

The act removes the specified numbers of nonelectronic copies of election statistics and official rosters of federal, state, county, township, and municipal officers that formerly were required to be compiled and published biennially by the Secretary of State. The act, instead, requires that the statistics and rosters must be compiled and published biennially in a paper, book, or electronic format.

Filing fees for multiple agent changes

(R.C. 111.16)

The act requires the Secretary of State to charge and collect \$125, plus \$3 per entity record being changed, for a multiple change of agent name or address, standardization of agent address, or resignation of agent for corporations, nonprofit corporations, foreign corporations, foreign nonprofit corporations, limited liability companies, foreign limited liability companies, business trusts, real estate investment trusts, partnerships, or limited partnerships.

Information Systems Fund

(R.C. 111.181)

The act creates the Information Systems Fund in the state treasury for the information technology related expenses of the Secretary of State's office. The fund is to receive revenue from fees charged to customers for special database requests, including corporate and Uniform Commercial Code filings. The fund was established in temporary prior law; the act codifies the fund's creation in permanent law.



Help America Vote Act funds

(R.C. 111.28)

The act creates, in the state treasury, the Help America Vote Act (HAVA) Fund. All moneys received by the Secretary of State from the United States Election Assistance Commission must be credited to the fund. The Secretary of State is required to use the moneys credited to the fund for activities conducted pursuant to the Help America Vote Act of 2002.²⁵⁷ All investment earnings of the fund must be credited to the fund.

The act also creates, in the state treasury, the Election Reform/Health and Human Services Fund. All moneys received by the Secretary of State from the United States Department of Health and Human Services must be credited to the fund. The Secretary of State is required to use the moneys credited to the fund for activities conducted pursuant to grants awarded to the state under the Help America Vote Act of 2002²⁵⁸ to assure access for individuals with disabilities. All investment earnings of the fund must be credited to the fund.

The Help America Vote Act of 2002, among other provisions, provides for grants of money to states to assist in the acquisition of voting machines and to ensure that polling places and voting equipment are accessible to individuals with disabilities. The act establishes, in permanent law, funds that previously existed only in temporary law to receive federal moneys pursuant to HAVA.

Citizen Education Fund

(R.C. 111.29)

The act creates, in the state treasury, the Citizen Education Fund. The fund is to receive gifts, grants, fees, and donations from private individuals and entities for voter education purposes. The Secretary of State is required to use moneys credited to the fund for preparing, printing, and distributing voter registration and educational materials and for conducting related workshops and conferences for public education. The fund was previously established in temporary law.

²⁵⁷ Pub. L. No. 107-252, 116 Stat. 1666.

²⁵⁸ Title II, Subtitle D, Sections 261 to 265.



Electronic format and more flexible distribution requirements for session laws

(R.C. 149.091 and 149.11)

The act requires the Secretary of State to publish the session laws (the Laws of Ohio) in a paper or electronic format as an alternative to the former requirement for a permanently bound format (with a minimum of 25 copies in permanently bound volumes). The act also eliminates former specific numbers of copies to be produced and relaxes the distribution requirements by authorizing instead of requiring the free distribution of the session laws to specified persons (county auditors, county law libraries, and other public officials). The persons who would have received free bound copies under prior law (the clerks of both houses of the General Assembly, the Legislative Service Commission, the Ohio Supreme Court, the Library of Congress, the State Library, the Ohio Historical Society, and the Secretary of State) must continue to receive free copies of the session laws in paper or electronic format from the Secretary of State.

Abolishment of the Secretary of State Business Technology Fund

(R.C. 1309.528 and 111.18)

The act abolishes the Secretary of State Business Technology Fund in the state treasury. The money in the Fund resulted from transfers of 1% of the money credited to the Corporate and Uniform Commercial Code Filing Fund. The moneys credited to the Secretary of State Business Technology Fund were used only for the upkeep, improvement, or replacement of equipment, or for the training of employees in the use of equipment, that is used to conduct business of the Secretary of State under the Uniform Commercial Code or the General Corporation Law.²⁵⁹ Funds that were transferred to the Secretary of State Business Technology Fund will be retained in the Corporate and Uniform Commercial Code Filing Fund.

Notices sent by the Secretary of State

(R.C. 1329.04, 1329.42, 1701.07, 1702.59, 1776.83, and 1785.06)

The act requires the Secretary of State to use ordinary or electronic mail instead of certified mail or notices sent "in writing" to notify businesses of the need to renew registrations of trade names, reports of fictitious names, and registrations of names, marks, or devices to indicate ownership of articles or supplies; to renew statements of continued existence; to revoke statements of qualification of partnerships that fail to file

²⁵⁹ R.C. Titles XIII and XVII.



biennial reports; to give notices of failure to file a biennial statement; and to appoint a new statutory agent or file a statement of change of address for that agent. These notices are to be sent to the last known physical or electronic mail address of the businesses, rather than the last known address.

Filing fees for transactions of business and mergers or consolidations

(R.C. 1703.031 and 1703.07)

The act removes the former specific fee (\$100) from the statute requiring a bank, savings bank, or savings and loan association chartered under the laws of the United States and whose main office is located in another state to provide notice it is transacting business in Ohio with the Secretary of State, and instead cross references the statute detailing the fees to be charged and collected by the Secretary of State,²⁶⁰ which under continuing law sets this fee at \$125. Similarly, the act removes the former fee specified (\$10) in the statute requiring a filing fee to be collected by the Secretary of State before filing a certificate of a foreign corporation's merger or consolidation and instead cross references the statute detailing the fees to be charged and collected by the Secretary of State, which under continuing law sets this fee at \$125. This cures an inconsistency in prior law between the fees charged for these two activities.

Voting equipment testing fee

(R.C. 3506.05)

The act increases from \$1,800 to \$2,400 the fee that must be paid by a voting machine vendor in order to have the Board of Voting Machine Examiners test the vendor's voting equipment for possible certification in Ohio. The Board of Voting Machine Examiners is required to test voting machines, marking devices, and automatic tabulating equipment that a vendor submits for possible certification for use in Ohio. Upon submission of voting equipment for testing, and the payment of the required fee by the vendor, the Board must examine the voting equipment to determine whether it meets the statutory standards for vote retention, security, storage, and other crucial operations of the equipment as may be determined by the Board. If the Board determines that the voting equipment is secure and capable of performing the required functions, it may recommend that the Secretary of State certify the equipment for use in Ohio.

²⁶⁰ R.C. 111.16.



Conversion of a nonprofit corporation into another business entity

Conversion, generally

(R.C. 1702.01, 1702.461, 1702.462, and 1705.01; R.C. 1705.361, 1776.01, and 1776.72, not in the act)

In general, the act allows a nonprofit corporation that is formed under Ohio law to convert into any of the following entities:

- (1) A nonprofit corporation existing under the laws of another state;
- (2) A common law trust existing under the laws of Ohio, the United States, or any other state;
- (3) An unincorporated nonprofit organization, including a general or limited partnership, existing under the laws of Ohio, the United States, or any other state;
- (4) A limited liability company existing under the laws of Ohio, the United States, or any other state.

For the conversion to occur, the conversion also must be permitted by the law under which the converted entity would exist. Ohio's Uniform Partnership Law allows already for the conversion of a nonprofit corporation into a partnership. The act redefines "entity," as that term is used in the Limited Liability Company Law, to include a nonprofit corporation. The effect of this change is to allow a nonprofit corporation to convert into a limited liability company under that law.

Additionally, all conversions that occur under the act must occur pursuant to the nonprofit corporation's written declaration of conversion (see "**Written declaration of conversion**," below). Also, no conversion is permitted if there are reasonable grounds to believe that the conversion or substitution would render the converted entity unable to pay its obligations as they become due in the usual course of its affairs.

Written declaration of conversion

Declaration contents

(R.C. 1702.461(B), (C), and (G))

The written declaration of conversion, pursuant to which a nonprofit corporation conversion must occur, must set forth all of the following information:



(1) The name and form of entity that is being converted, the name and form of entity into which the entity will be converted, and the jurisdiction of formation of the converted entity;

(2) The complete terms of all documents required under the law of the converted entity's formation to form the converted entity;

(3) If the converted entity is a foreign entity, the consent of the converted entity to be sued and served with process in Ohio, and the irrevocable appointment of the Secretary of State as the agent of the converted entity to accept service of process in Ohio to enforce against the converted entity any obligation of the converting corporation or to enforce the rights of a dissenting shareholder of the converting corporation;

(4) If the converted entity is a foreign entity, and if the converted entity desires to transact business in Ohio, the information required to qualify or to be licensed under Ohio law;

(5) All other statements and matters required to be set forth in the declaration of conversion by applicable Ohio law, if the converted entity is a domestic entity, or by the laws under which the converted entity will be formed, if the converted entity is a foreign entity;

(6) The terms of the conversion, the mode of carrying them into effect, and the manner and basis of converting the interests of the converting corporation into, or substituting the interests in the converting corporation for, interests in the converted entity.

In addition to the above information, the written declaration of conversion also can set forth any of the following information:

(1) The effective date of the conversion (see "**Effective date of conversion**," below);

(2) A provision authorizing, prior to the filing of the certificate of conversion (see "**Certificate of conversion**," below), the converting corporation to abandon the proposed conversion by action of the converting corporation's trustees or by the same vote as was required to adopt the declaration of conversion;

(3) A provision authorizing, prior to the filing of the certificate of conversion, the trustees of the converting corporation to amend the declaration of conversion, except as prohibited under the act (see "**Amendments to the declaration**," below);



(4) A statement of, or a statement of the method to be used to determine, the fair value of the assets owned by the converting corporation at the time of the conversion;

(5) The parties to the declaration of conversion in addition to the converting entity;

(6) Any additional provision necessary or desirable with respect to the proposed conversion or the converted entity.

Declaration approval and adoption

(R.C. 1702.461(D), (E), (F), and (G)(1))

Under the act, the declaration of conversion must be approved by the converting corporation's trustees and adopted by the converting corporation's members before taking effect. The approval and adoption must occur at a meeting of the members held for that purpose. Notice of the meeting, accompanied by a copy or a summary of the material provisions of the declaration of conversion, must be given to all members of the corporation, whether or not they are entitled to vote.

The vote required to adopt a declaration of conversion is the affirmative vote of the members of that corporation entitling them to exercise at least two-thirds of the voting power of the corporation on the proposal, or a different proportion as provided in the articles. In no case, however, can the required vote be less than a majority. If the nonprofit corporation is converting to a foreign corporation, a different proportion as the articles provide for a merger or consolidation, and the affirmative vote of the members of any particular class as required by the articles of the converting corporation, is sufficient. For all conversions, if the declaration of conversion would authorize any particular corporate action that under any applicable provision of law or the articles could be authorized only with a specified vote of members, the declaration of conversion also must be adopted by the same affirmative vote as required for that action.

The trustees can abandon the conversion at any time before the filing of the certificate of conversion with the Secretary of State, if the trustees are authorized to do so by the declaration of conversion. The trustees can accomplish this action by the same vote of the members as was required to adopt the declaration of conversion.

Amendments to the declaration

(R.C. 1702.461(G)(2))

The converting corporation's trustees can amend the declaration of conversion, before the certificate of conversion is filed with the Secretary of State, if permitted under



the declaration of conversion. The act prohibits the trustees, however, from amending the declaration of conversion to do any of the following:

(1) Alter or change any term of the converted entity's organizational documents except for alterations or changes that are adopted with the vote or action of the persons, the vote or action of which would be required for the alteration or change after the conversion;

(2) Alter or change any other terms and conditions of the declaration of conversion if any of the alterations or changes, alone or in the aggregate, materially and adversely would affect the members of the converting corporation.

Certificate of conversion

(R.C. 1702.462)

The act requires the converting corporation, either upon adoption of the declaration of conversion or at a later time as authorized by the declaration of conversion, to file a certificate of conversion with the Secretary of State. The certificate must be on a form prescribed by the Secretary of State and it must be signed by an authorized representative of the converting entity.

The certificate must set forth the following information:

(1) The name and form of entity of the converting entity and the state under the laws of which the converting entity exists;

(2) A statement that the converting entity has complied with all of the laws under which it exists and that the laws permit the conversion;

(3) The name and mailing address of the person or entity that is to provide a copy of the declaration of conversion in response to any written request made by a member of the converting entity;

(4) The effective date of the conversion;

(5) The signature of the representative or representatives authorized to sign the certificate on behalf of the converting entity and the office held or the capacity in which the representative is acting;

(6) A statement that the declaration of conversion is authorized on behalf of the converting entity and that each person signing the certificate on behalf of the converting entity is authorized to do so;



(7) The name and form of the converted entity and the state under the laws of which the converted entity will exist;

(8) If the converted entity is a foreign entity that will not be licensed in Ohio, the name and address of the statutory agent upon whom any process, notice, or demand may be served.

The certificate also must be accompanied by the following items, as applicable:

(1) If the nonprofit corporation is converting into a limited liability company, limited partnership, or other partnership, any organizational document that would be filed upon the creation of the new entity.

(2) If the converted entity is a foreign entity that desires to transact business in Ohio, both of the following:

(a) Consent of the converted entity to be sued and served with process in Ohio, and the irrevocable appointment of the Secretary of State as the agent of the converted entity to accept service of process in Ohio to enforce against the converted entity any obligation of the converting corporation or to enforce the rights of a dissenting shareholder of the converting corporation;

(b) The information required to qualify or to be licensed under Ohio law;

(3) If a foreign or domestic corporation licensed to transact business in Ohio is the converting entity, the certificate of conversion must be accompanied by the affidavits, receipts, certificates, or other evidence that is required under continuing law in the case of a nonprofit corporation dissolution, with respect to a converting domestic corporation, or, with respect to a converting foreign corporation, by the affidavits, receipts, certificates, or other evidence required under continuing law when a foreign corporation files a certificate of surrender with the Secretary of State, surrendering its license to transact business in Ohio.

The act requires also that all documents required to be filed in connection with the conversion by the laws under which the entity is or will be formed must be filed in the proper office.

Effective date of conversion

(R.C. 1702.462(D))

A nonprofit corporation conversion is effective either upon the filing of a certificate of conversion or at any later date that the certificate of conversion specifies.



Secretary of State's certificate

(R.C. 1702.462(E))

The act requires that the Secretary of State furnish, upon request and payment of the fee for creating and affixing the seal of the Office of the Secretary of State to certain certificates (which, under continuing law is \$25), the Secretary of State's certificate setting forth all of the following:

- (1) The converting entity's name and form of entity and the state under the laws of which it existed prior to the conversion;
- (2) The converted entity's name and form of entity and the state under the laws of which it will exist;
- (3) The date of filing of the certificate of conversion with the Secretary of State and the effective date of the conversion.

Filing for record in the office of the county recorder

(R.C. 1702.462(F))

The act specifically permits either the certificate of the Secretary of State or a copy of the certificate of conversion certified by the Secretary of State to be filed for record in the office of the recorder of any Ohio county. If filed, the certificate must be recorded in the records of deeds for that county. The county recorder must charge and collect the same fee for the recording as in the case of deeds.

"Entity" under the Nonprofit Corporation Law and the Limited Liability Company Law

(R.C. 1702.01 and 1705.01)

The act defines "entity," as used throughout the Nonprofit Corporation Law, and changes the definition of "entity" as used in the Limited Liability Company Law. In the Nonprofit Corporation Law, the act defines "entity" as any of the following:

- (1) A nonprofit corporation existing under the laws of Ohio or any other state;
- (2) Any of the following organizations existing under the laws of Ohio, the United States, or any other state:
 - (a) A common law trust;



(b) An unincorporated nonprofit organization, including a general or limited partnership;

(c) A limited liability company;

(d) A for profit corporation.

While this new definition appears to limit the meaning of the term "entity" as it is used in the Nonprofit Corporation Law, it appears to have no actual effect on that Law.

In the Limited Liability Company Law, the act includes nonprofit corporations in the definition of "entity." The effect of this change is to allow nonprofit corporations to convert into limited liability companies under the Limited Liability Company Law, as other entities are permitted to do under continuing law.

