



## 2022 South Dakota Legislature

# House Bill 1060

Introduced by: **Representative Stevens**

1 **An Act to repeal certain domestication provisions in the Uniform Limited Liability**  
 2 **Company Act.**

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 **Section 1. That § 47-34A-1010 be REPEALED:**

5 ~~(a) A foreign limited liability company may become a domestic limited liability~~  
 6 ~~company only if the domestication is permitted by the organic law of the foreign limited~~  
 7 ~~liability company.~~

8 ~~(b) A domestic limited liability company not required by law to be a domestic~~  
 9 ~~limited liability company may become a foreign limited liability company if the~~  
 10 ~~domestication is permitted by the laws of the foreign jurisdiction. Regardless of whether~~  
 11 ~~the laws of the foreign jurisdiction require the adoption of a plan of domestication, the~~  
 12 ~~domestication shall be approved by the adoption of the limited liability company of a plan~~  
 13 ~~of domestication in the manner provided in this section and §§ 47-34A-1011 to 47-34A-~~  
 14 ~~1016, inclusive.~~

15 **Section 2. That § 47-34A-1011 be REPEALED:**

16 ~~(a) The plan of domestication shall include:~~  
 17 ~~(1) A statement of the jurisdiction in which the limited liability company is presently~~  
 18 ~~domesticated; and~~

19 ~~(2) A statement of the jurisdiction in which the limited liability company is to be~~  
 20 ~~domesticated.~~

21 ~~(b) The plan of domestication may include:~~  
 22 ~~(1) As a referenced attachment, the articles of organization of the limited liability~~  
 23 ~~company upon its domestication; and~~  
 24 ~~(2) Any other provision relating to the domestication.~~

1           ~~(c) The plan of domestication may also include a provision that the plan may be~~  
2           ~~amended at any time prior to filing the document required by the laws of this state or the~~  
3           ~~other jurisdiction to consummate the domestication.~~

4           **Section 3. That § 47-34A-1012 be REPEALED:**

5           ~~In the case of a domestic limited liability company:~~

6           ~~(a) Unless the articles of organization or a written operating agreement of the limited~~  
7           ~~liability company provides otherwise, the members of the limited liability company~~  
8           ~~shall approve the plan of domestication by the members in the manner provided~~  
9           ~~in the limited liability company's operating agreement for amendments to the~~  
10           ~~operating agreement or, if no such provision is made in an operating agreement,~~  
11           ~~by all the members.~~

12           ~~(b) If an amendment to a plan of domestication is made in accordance with subsection~~  
13           ~~47-34A-1011(c), and articles of domestication already have been filed with the~~  
14           ~~secretary of state, amended articles of domestication shall be filed with the~~  
15           ~~secretary of state before the effective date of any certificate of domestication~~  
16           ~~issued by the secretary of state for the articles of domestication which the amended~~  
17           ~~articles are to supersede.~~

18           **Section 4. That § 47-34A-1013 be REPEALED:**

19           ~~(a) After the domestication of a foreign limited liability company is approved in the~~  
20           ~~manner required by the laws of the jurisdiction in which the limited liability company is~~  
21           ~~organized, the limited liability company shall file with the secretary of state articles of~~  
22           ~~domestication setting forth:~~

23           ~~(1) The name of the limited liability company immediately prior to the filing of the~~  
24           ~~articles of domestication and, if that name is unavailable for use in this state or the~~  
25           ~~limited liability company desires to change its name in connection with the~~  
26           ~~domestication, a name that satisfies the requirements of § 47-34A-105;~~

27           ~~(2) The plan of domestication; and~~

28           ~~(3) The original jurisdiction of the limited liability company and the date the limited~~  
29           ~~liability company was organized in that jurisdiction, and each subsequent~~  
30           ~~jurisdiction and the date the limited liability company was domesticated in each~~  
31           ~~such jurisdiction, if any, prior to the filing of the articles of domestication.~~

32           ~~(b) The articles of domestication shall have attached articles of organization that~~  
33           ~~comply with the requirements contained in § 47-34A-203.~~

1           ~~(c) If the secretary of state finds that the articles of domestication comply with the~~  
2 ~~requirements of law and that all required fees have been paid, the secretary of state shall~~  
3 ~~issue a certificate of domestication.~~

4           ~~(d) The articles of domestication shall become effective pursuant to § 47-34A-206.~~

5           ~~(e) A foreign limited liability company's existence as a domestic limited liability~~  
6 ~~company shall begin when the certificate of domestication is effective. Upon becoming~~  
7 ~~effective, the certificate of domestication shall be conclusive evidence that all conditions~~  
8 ~~precedent required to be performed by the foreign limited liability company have been~~  
9 ~~complied with and that the limited liability company has been organized under this~~  
10 ~~chapter.~~

11           ~~(f) If the foreign limited liability company is authorized to transact business in this~~  
12 ~~state under § 47-34A-1004, its certificate of authority is canceled automatically on the~~  
13 ~~effective date of the certificate of domestication issued by the secretary of state.~~

14 **Section 5. That § 47-34A-1014 be REPEALED:**

15           ~~(a) If a domestic limited liability company has approved, in the manner required~~  
16 ~~by § 47-34A-1012, a plan of domestication providing for the limited liability company to~~  
17 ~~be domesticated under the laws of another jurisdiction, the limited liability company shall~~  
18 ~~file with the secretary of state articles of organization surrender setting forth:~~

19           ~~(1) The name of the limited liability company;~~

20           ~~(2) The limited liability company's new jurisdiction of organization;~~

21           ~~(3) The plan of domestication;~~

22           ~~(4) A statement that the articles of organization surrender are being filed in connection~~  
23 ~~with the domestication of the limited liability company as a foreign limited liability~~  
24 ~~company to be organized under the laws of another jurisdiction and that the limited~~  
25 ~~liability company is surrendering its certificate of organization under the laws of~~  
26 ~~this state;~~

27           ~~(5) A statement that the limited liability company revokes the authority of its registered~~  
28 ~~agent to accept service on its behalf and appoints the secretary of state as its agent~~  
29 ~~for service of process in any proceeding based on a cause of action arising during~~  
30 ~~the time it was organized in this state;~~

31           ~~(6) A mailing address to which the secretary of state may mail a copy of any process~~  
32 ~~served on the secretary of state under subdivision (5); and~~

33           ~~(7) A commitment to notify the secretary of state in the future of any change in the~~  
34 ~~mailing address of the limited liability company.~~

1           ~~(b) If the secretary of state finds that the articles of organization surrender comply~~  
2 ~~with the requirements of law and that all required fees have been paid, the secretary of~~  
3 ~~state shall issue a certificate of organization surrender.~~

4           ~~(c) The limited liability company shall automatically cease to be a domestic limited~~  
5 ~~liability company when the certificate of organization surrender becomes effective.~~

6           ~~(d) If the former domestic limited liability company intends to continue to transact~~  
7 ~~business in the state, within thirty days after the effective date of the certificate of~~  
8 ~~organization surrender issued pursuant to subsection (b), the former domestic limited~~  
9 ~~liability company shall deliver to the secretary of state an application for a certificate of~~  
10 ~~authority to transact business in the state pursuant to § 47-34A-1002 together with a~~  
11 ~~certificate of existence or a record of similar import authentication by the secretary of~~  
12 ~~state or other official having custody of company records in the state or country under~~  
13 ~~whose law it is organized together with any fee required by § 47-34A-1206 and any other~~  
14 ~~required fee.~~

15   **Section 6. That § 47-34A-1015 be REPEALED:**

16           ~~(a) When a foreign limited liability company's certificate of domestication in this~~  
17 ~~state becomes effective, with respect to that limited liability company:~~

18           ~~(1) The title to all real estate and other property remains in the limited liability company~~  
19           ~~without reversion or impairment;~~

20           ~~(2) The liabilities remain the liabilities of the limited liability company;~~

21           ~~(3) A proceeding pending may be continued by or against the limited liability company~~  
22           ~~as if the domestication did not occur;~~

23           ~~(4) The articles of organization attached to the articles of domestication constitute the~~  
24           ~~articles of organization of the limited liability company; and~~

25           ~~(5) The limited liability company is deemed to:~~

26           ~~(i) Be organized under the laws of this state for all purposes;~~

27           ~~(ii) Be the same limited liability company as the limited liability company that~~  
28           ~~existed under the laws of the jurisdiction or jurisdictions in which it was~~  
29           ~~originally organized or formerly domesticated; and~~

30           ~~(iii) Have been organized on the date it was originally formed or organized.~~

31           ~~(b) Any member of a foreign limited liability company that domesticates into this~~  
32 ~~state who, prior to the domestication, was liable for the liabilities or obligations of the~~  
33 ~~limited liability company is not released from those liabilities or obligations by reason of~~  
34 ~~the domestication.~~

1 **Section 7. That § 47-34A-1016 be REPEALED:**

2 ~~(a) Unless the domestic limited liability company's articles of organization,~~  
3 ~~operating agreement, or the plan of domestication provides otherwise, after the~~  
4 ~~domestication has been authorized and at any time before the effective date of the~~  
5 ~~certificate of domestication issued by the Office of the Secretary of State, the~~  
6 ~~domestication may be abandoned by majority vote of the members of the domestic limited~~  
7 ~~liability company.~~

8 ~~(b) If a domestication is abandoned under subsection (a) after articles of~~  
9 ~~organization surrender have been filed with the secretary of state but before the certificate~~  
10 ~~of organization surrender has become effective, written notice that the domestication has~~  
11 ~~been abandoned in accordance with this section shall be filed with the secretary of state~~  
12 ~~prior to the effective date of the certificate of organization surrender. The notice shall take~~  
13 ~~effect upon filing and the domestication shall be deemed abandoned and shall not become~~  
14 ~~effective.~~

15 ~~(c) If the domestication of a foreign limited liability company into this state is~~  
16 ~~abandoned in accordance with the laws of the foreign jurisdiction after articles of~~  
17 ~~domestication have been filed with the secretary of state but before the certificate of~~  
18 ~~domestication has become effective in this state, written notice that the domestication~~  
19 ~~has been abandoned shall be filed with the secretary of state prior to the effective date of~~  
20 ~~the certificate of domestication. The notice shall take effect upon filing and the~~  
21 ~~domestication shall be deemed abandoned and shall not become effective.~~