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## 2019 – A YEAR IN REVIEW FOR CORPORATION, LLC, AND OTHER BUSINESS ENTITY LAWS



**“Keeping track of the changes to business entity statutes is important for the company’s managers, owners, investors, and advisers.”**

Keeping track of the changes to business entity statutes is important for the company’s managers, owners, investors, and advisers. But it can be hard to do, considering how often the laws are amended and how many judicial decisions interpreting those laws are rendered each year. To help all interested parties keep up, CT has compiled some of the significant legislative and case law developments we have tracked and reported for you in our Resource Center during 2019.

### **ALABAMA**

House Bill 250, effective January 1, 2020, enacts a new Alabama Business Corporation Law. Among many other changes, the new law provides for incorporation, amendment, and dissolution filings to be made with the Secretary of State rather than with the county judge of probate. The new law applies to all corporations incorporated on or after January 1, 2020, and pre-existing corporations that elect to be governed by the new law. All corporations will be governed by the new law on January 1, 2021. For more information on the new corporation law, see our article [Alabama Enacts New Corporation Law](#).

### **ARIZONA**

Senate Bill 1353 (Laws of 2018), effective September 1, 2019, enacts a new Arizona Limited Liability Company Act. The new LLC Act governs all LLCs formed in Arizona on or after September 1, 2019. It will govern LLCs that existed before then on September 1, 2020—at which time the old LLC law is repealed. For more information on the new LLC law see our article [Arizona’s New LLC Law Brings Significant Changes](#).

*YF Bethanny Inc. v. 16 Bethany Station LLC*, No. 1 CA-CV 18-0183, decided February 19, 2019. The Arizona Court of Appeals ruled the fact that a lessee converted from a corporation to an LLC had no bearing on whether it was a proper party to bring a suit for breach of the lease. An entity that converts from a corporation to an LLC remains the same entity with the same rights it had before the conversion.

### **ARKANSAS**

Senate Bill 142, effective February 13, 2019, amends the business corporation and nonprofit corporation acts to authorize a for-profit corporation to convert to a nonprofit corporation.

House Bill 1611, effective October 1, 2019, amends the LLC law by authorizing the registration of protected series of a series LLC. For more information see our article [Arkansas Adopts the Uniform Protected Series Act](#).

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## CALIFORNIA

Assembly Bill 716, effective January 1, 2020, amends the fictitious business name law regarding proof of a registrant's identity on filings.

Assembly Bill 857, effective January 1, 2020, authorizes cities and counties to form a limited number of banks. Public banks may be incorporated under either the Nonprofit Mutual Benefit Corporation Law or the Nonprofit Public Benefit Corporation Law. For more information on this bill see our article [California Enacts Historic Public Banking Law to Address Community Needs](#).

*Savea v. YRC Inc.*, A152379, decided April 10, 2019. The California Court of Appeal ruled that a corporation did not violate the Labor Law requirement to identify the employer's name on its wage statements by using its registered fictitious business name.

## COLORADO

*Sedgwick Properties Development Corp. v. Hinds*, 2019 COA 10, decided July 3, 2019. The Colorado Court of Appeals, in reversing the trial court's piercing the veil of a single-member LLC, stated the trial court should have taken into account the difference between a corporation and a single-member LLC in determining whether to pierce the veil.

## CONNECTICUT

Senate Bill 1083, effective July 1, 2019, amends the trade name law regarding contents of trade (assumed) name registration filings and State record keeping; and effective January 1, 2020, amends the business and nonprofit corporation laws regarding due dates of Initial Reports and Annual Reports, and further amends all of the entity laws regarding Annual Report contents and administrative dissolution or cancellation and foreign revocation.

House Bill 7340, effective July 9, 2019, enacts new sections of law addressing the use of veil piercing and reverse veil piercing in determining the liability of interest holders of domestic entities for the entities' debts and obligations and liability of domestic entities for the debts and obligations of their interest holders.

## DELAWARE

Senate Bill 88, generally effective August 1, 2019, (i) amends the General Corporation Law regarding a variety of topics

including organization meetings; electronic documentation, signatures and transmission of documents, notices, consents and demands; registered agent resignations; exceptions to notice to stockholders or members; agreements of merger; revival of exempt corporations; and document ordering fees; and (ii) effective for tax year beginning on January 1, 2019, amends the Corporation Franchise Tax law regarding regulated investment company franchise tax rates.

Senate Bill 89, effective August 1, 2019, amends the LP law regarding a variety of topics including names; name reservation; registered agent resignations; voluntary and judicial cancellation; electronic documentation, signatures and transmission of documents; liability for false statement; protected series of limited partners, general partners, partnership interests or assets; registered series thereof; division of LPs; creation of public benefit LPs; filing and document ordering fees; and administrative cancellation.

Senate Bill 90, effective August 1, 2019, amends the partnership law (including LLPs) regarding definitions; names; registered agent resignations; electronic documentation, signatures and transmission of documents; records maintenance and document ordering fees.

Senate Bill 91, effective August 1, 2019, amends the LLC law regarding a variety of topics including definitions; names; registered agent resignations; electronic documentation, signatures and transmission of documents; protected series of members, managers, limited liability company interests or assets; registered series thereof; division of LLCs; and document ordering fees.

*KT4 Partners LLC v. Palantir Technologies Inc.*, No. 281, 2018, decided January 29, 2019. The Delaware Supreme Court ruled that a shareholder was entitled to inspect emails where they were necessary to satisfy a request under Sec. 220 of the General Corporation Law. The evidence showed that the corporation conducted formal corporate business largely through informal electronic communications and that more traditional materials such as board resolutions or minutes did not exist. The court also ruled that the Chancery Court erred in limiting the shareholder's use of the materials it was entitled to inspect to litigation brought in the Delaware Chancery Court.

*Sciabacucchi v. Salzberg*, C.A. No. 2017-0931, decided July 8, 2019. The Delaware Chancery Court awarded a fee of \$3 million to the attorneys of the stockholder plaintiff who

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successfully challenged the validity of a charter provision requiring claims brought under the Securities Act of 1933 to be brought in federal court. The plaintiff achieved a significant result and the attorneys developed and advanced nuanced public policy arguments in a complex and precedent-setting case.

*Tiger v. Boast Apparel, Inc.*, No. 23, 2019, decided August 7, 2019. The Delaware Supreme Court held that there is no presumption of confidentiality in Sec. 220 productions. The Court of Chancery must assess and compare benefits and harms when determining the initial degree and duration of confidentiality. Furthermore, an indefinite period of confidentiality should be the exception and not the rule.

*Marchand v. Barnhill*, No. 533, 2018, decided June 18, 2019. The Delaware Supreme Court held that dismissal of the stockholder's Caremark claim was improper, as he pleaded facts supporting a fair inference that no reasonable compliance system and protocols were established, that the board of director's lack of efforts resulted in it not receiving official notices of food safety deficiencies, and that its failure to take remedial action exposed consumers to harm.

## FLORIDA

[House Bill 1009](#), effective January 1, 2020, revises provisions of the Business Corporation Act on topics including, but not limited to, names, bylaws, shareholder agreements, internal claims, committees, meetings, mergers, domestication, dissolution, and reinstatement. For more information on the amendments see our article [Florida Makes Major Changes to its Business Corporation Act](#).

*Pansky v. Barry S. Franklin & Assoc., P.A.*, No. 4D16-1353, decided February 13, 2019. The Florida Court of Appeals ruled that the trial court went beyond what the Florida LLC law authorizes when it ordered the transfer of a judgment debtor's ownership interests in an LLC to the law firm that was the debtor's judgment creditor. A charging order was the law firm's sole remedy to satisfy the debt out of the debtor member's LLC interests.

## HAWAII

[House Bill 944](#), effective June 7, 2019, amends the Nonprofit Corporations Act concerning the purchase of memberships, consents, and officers' duties.

## IDAHO

[House Bill 84](#), effective July 1, 2019, amends provisions of the corporation law relating to documents, notices and other communications, ratification of actions, householding, proxies, business opportunities, domestication, conversions, mergers, inspections, and more.



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## ILLINOIS

[House Bill 2528](#), effective January 1, 2020, amends the Assumed Business Name Act regarding a person conducting business under an assumed name at his or her personal residence.

[House Bill 3663](#), effective January 1, 2020, enacts the Limited Worker Cooperative Association Act, authorizing the formation of a limited cooperative association, which may be formed for any purpose, whether or not for profit.

[Senate Bill 689](#) provides for the phase out of Illinois' franchise tax on domestic and foreign corporations.

Specifically the bill provides as follows:

- ▶ On or after January 1, 2020, and prior to January 1, 2021, the first \$30 in liability is exempt from the franchise tax imposed by Secs. 15.35 and 15.65 of the Business Corporation Act
- ▶ On or after January 1, 2021, and prior to January 1, 2022, the first \$1,000 in liability is exempt
- ▶ On or after January 1, 2022, and prior to January 1, 2023, the first \$10,000 in liability is exempt
- ▶ On or after January 1, 2023, and prior to January 1, 2024, the first \$100,000 in liability is exempt
- ▶ No payment of any franchise tax will be due and payable on or after January 1, 2024

[House Bill 3394](#), effective August 27, 2019, provides that no later than January 1, 2021, the following information shall be provided in a corporation's annual report:

(1) Whether the corporation is a publicly held domestic or

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foreign corporation with its principal executive office located in Illinois.

- (2) Where the corporation is a publicly held domestic or foreign corporation with its principal executive office located in Illinois the following must be provided:
- ▶ Data on specific qualifications, skills, and experience that the corporation considers for its board of directors, nominees for the board of directors, and executive officers.
  - ▶ The self-identified gender of each member of its board of directors.
  - ▶ Whether each member of its board of directors self-identifies as a minority person and, if so, which race or ethnicity to which the member belongs.
  - ▶ A description of the corporation's process for identifying and evaluating nominees for the board of directors, including whether and, if so, how demographic diversity is considered.
  - ▶ A description of the corporation's process for identifying and appointing executive officers, including whether and, if so, how demographic diversity is considered.
  - ▶ A description of the corporation's policies and practices for promoting diversity, equity, and inclusion among its board of directors and executive officers.

*Groeper v. Fitts Management Group*, No. 1-17-0864, decided March 4, 2019. The Illinois Appellate Court ruled that it was not improper to dismiss a suit brought against foreign corporations on the grounds that they had not qualified in the state. The Illinois corporation law provides that unqualified corporations doing business in the state cannot bring an action in state courts but allows them to defend an action.

## IOWA

**Senate File 569**, effective July 1, 2019, amends the Limited Liability Company law to authorize LLCs to rescind a dissolution. The bill also enacts the Uniform Protected Series Act, effective July 1, 2020.

*Wells Fargo Equipment Finance, Inc. v. Retterath*, No. 18-0599, decided April 12, 2019. The Iowa Supreme Court ruled that a membership interest in an LLC is located where the LLC is formed and not where the member is located. Therefore, Iowa

law applied in determining the validity of a charging order against the interest of a Florida resident in an Iowa LLC.

## KANSAS

**House Bill 2039**, effective July 1, 2019, amends the LLC law by authorizing the creation of Statutory Public Benefit LLCs, providing for a new transaction called a division, adding a section addressing powers of attorney, allowing future effective dates for certain filings, allowing for the use of distributed and other electronic networks and databases, clarifying remedies not available to members' judgment creditors, and allowing consents and approvals to take effect at a future date and time.

## KENTUCKY

**House Bill 453**, effective June 26, 2019, amends the nonprofit laws to allow for mergers between domestic nonprofit corporations and domestic nonprofit LLCs.

## MAINE

**Legislative Document 1519**, effective September 19, 2019, provides for the establishment of benefit corporations. For more information see our article [Maine Adopts a Benefit Corporation Law](#).

## MARYLAND

**Senate Bill 137**, effective October 1, 2019, amends the General Corporation Law regarding, among other things, board vacancies, informal action by stockholders, quorums, mergers and consolidations, and the powers of REITs.

**House Bill 1116**, effective October 1, 2019 requires a tax-exempt domestic nonstock corporation with an operating budget exceeding \$5 million and a domestic stock corporation with total sales exceeding \$5 million to include in the annual report (personal property tax return) filed with the Department of Assessments and Taxation, the number of female board members and the total number of members of the board of directors. This does not apply to a privately held company if at least 75% of the shareholders are family members.

**Senate Bill 136**, effective October 1, 2019, amends the Corporations and Associations Code regarding corporate recordkeeping and electronic transmissions, including the use of distributed electronic networks and databases.

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*Maryland Digital Copier v. Litigation Logistics, Inc.*, CA 18-2027, decided August 22, 2019. The U.S. District Court, District for the District of Columbia held that a Maryland corporation that leased copiers, printers, and other equipment from its Maryland office to a law firm in the District of Columbia for a short term project was not barred from bringing a breach of contract action in the District because it was not registered to do business. Providing goods and services across state lines is a fundamental form of interstate commerce and the statute provides that a foreign entity is not doing business in the District by doing business in interstate commerce

## **MONTANA**

[House Bill 65](#), effective July 1, 2019, amends the insurance law to provide that a foreign or alien insurer that transacts any business in Montana must have a registered agent upon whom any legal process, notice, or demand required or permitted by law to be served upon a company must be served. The agent must reside or maintain a business address in Montana.

## **NEBRASKA**

[Legislative Bill 78](#), effective September 1, 2019, amends the LLC law to permit an LLC to rescind its dissolution under certain circumstances and set forth the procedure for so doing. The bill also amends provisions related to series LLCs, effective January 1, 2021.

## **NEVADA**

[Assembly Bill 207](#), effective October 1, 2019, amends the corporation law regarding forum selection clauses, mergers, proxy voting, and written consents and the LLC law concerning alter ego liability and fiduciary duties. For more information, see our article [Nevada Enacts Important Amendments to its Corporation and LLC Laws](#).

[Senate Bill 163](#), effective October 1, 2019, amends the entity laws regarding the use of blockchain technology in connection with records maintenance and the carrying out of entities' purposes and powers.

## **NEW JERSEY**

[Assembly Bill 5607](#), effective June 30, 2019, amends the entity laws regarding Annual Report fee increases and reinstatements.

## **NEW MEXICO**

[Senate Bill 167](#), effective July 1, 2019, amends the Corporations chapter by authorizing the Secretary of State to accept electronically filed business entity documents and copies of signatures in connection with electronically filed documents.

## **NEW YORK**

[Assembly Bill 776](#), effective January 31, 2019, amends the election law to regulate political contributions made by limited liability companies.

[Assembly Bill 10336](#), effective July 1, 2019, amends the Not-for-Profit Corporation Law to provide that New York nonprofit corporations that have members will have to have at least three members (formerly, one). However, it does allow a nonprofit to have a single corporation, joint stock association, partnership, or other unincorporated association as a sole member as long as the sole member is owned or controlled by at least three persons.

[Assembly Bill 434](#), effective October 23, 2019, amends the Business Corporation Law to provide that a corporation may, if authorized by the board of directors: (1) implement reasonable measures to provide shareholders not physically present at a shareholders' meeting a reasonable opportunity to participate in the proceedings of the meeting substantially concurrently with such proceedings; and/or (2) provide reasonable measures to enable shareholders to vote or grant proxies with respect to matters submitted to the shareholders at a shareholders' meeting by means of electronic communication.

## **NORTH CAROLINA**

[Senate Bill 594](#), effective October 1, 2019, amends the law governing assumed business names to add specified terms that a person may not include in an assumed business name, to set out a form for an assumed business name certificate, and to provide that a form that complies with the set out form is sufficient to satisfy the requirements for the certificate's content.

## **NORTH DAKOTA**

[House Bill 1045](#), effective August 1, 2019, adds a provision to the North Dakota statutes relating to blockchain and amends the corporation law relating to, among other things, definitions, number of shareholders, annual reports, share

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certificates, shareholder voting lists, voting trusts, corporate records, dissolution, and, effective July 1, 2020 adding provisions to the LLC law authorizing series limited liability companies.

*Great Plains Royalty Corp. v. Earl Schwartz Co.*, 2019 ND 124, decided May 16, 2019. The North Dakota Supreme Court held the trial court erred in holding that a corporation that had been involuntarily dissolved for failing to file an annual report and pay fees, but that since had been reinstated, lost its ability to claim title to property it owned. Upon reinstatement it regained title to properties it owned before it was dissolved.

## OKLAHOMA

[Senate Bill 642](#), effective November 1, 2019, amends the Oklahoma General Corporation Act including, but not limited to, provisions related to applicability of the Act to nonstock corporations, contents of certificates of incorporation, execution of corporate instruments, adoption of bylaws, director committees, delayed effective dates for director written consents to action, mergers and consolidations, conversions, and repeal of the publication requirement related to nonprofit corporation dissolutions.

[House Bill 2423](#), effective November 1, 2019, amends the Corporations title by authorizing new and existing business corporations to become benefit corporations with the purpose of providing general and specific public benefit as defined in the Bill.

## OREGON

[House Bill 2998](#), effective September 29, 2019, amends provisions regarding the requirements for the Secretary of State to file business organization documents, including directing the Secretary of State to provide documents in foreign languages.

[Senate Bill 359](#), effective January 1, 2020, creates procedures whereby a corporation's board of directors may ratify a defective corporate action. It also requires the filing of articles of validation under certain circumstances, and authorizes the circuit court to take certain actions regarding the determination of the validity of corporate actions or ratifications.

[Senate Bill 360](#), operative January 1, 2020, amends numerous provisions of the Nonprofit Corporations Act on issues

including electronic transmissions and notice, shell corporations, bylaws, directors, committees, quorums, rights of members, mergers, and inspection of records.

## RHODE ISLAND

[Senate Bill 395](#), effective January 1, 2020, enacts the Transparency and Sustainability Standards for Rhode Island Businesses Act, under which a Rhode Island stock or nonstock corporation or LLC may be issued a Certificate of Adoption of Transparency and Sustainability Standards from the Department of Environmental Management attesting that the corporation or LLC has fulfilled sustainability metrics and filed with the Secretary of State a standards statement.

[House Bill 5646](#) and [Senate Bill 719](#), effective in part July 1, 2019 and in part July 1, 2020, amend the business corporation and LLC laws regarding tax clearance as it relates to dissolution, merger, conversion and foreign withdrawal, and administrative dissolution and foreign revocation.

## TENNESSEE

*Tennessee Wine and Spirits Retailers, Assn. v. Thomas*, No. 18-96, decided June 26, 2019. The U.S. Supreme Court held that a Tennessee law prohibiting companies from obtaining a license to operate retail liquor stores unless all of their directors, officers, and owners were Tennessee residents for the previous two years violates the Commerce Clause.

## TEXAS

[Senate Bill 1971](#), effective September 1, 2019, amends the Texas Business Organizations Code provisions governing corporations regarding, among other things, voting agreements, two-step offer-mergers, ratification of defective acts, notices of redemption, shareholder lists, and nonprofit corporation directors.

[Senate Bill 1969](#), effective September 1, 2019, amends the Texas Business Organizations Code to provide for the ratification of defective corporate acts of a nonprofit corporation.

[Senate Bill 1859](#), effective September 1, 2019, amends the Texas Business Organizations Code regarding, among other things, recordkeeping, effectiveness of filings, winding up of a series, creditor actions against partners, and indemnification of partners.

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**House Bill 3603**, effective September 1, 2019, amends the Texas Business Organizations Code provisions governing derivative proceedings on behalf of for-profit corporations, LLCs, and LPs.

**House Bill 3609**, effective September 1, 2019, amends the Texas Business & Commerce Code to provide that a corporation, LP, LLP, LLC or foreign filing entity required to file an assumed name certificate shall file the certificate in the office of the Secretary of State. Previously, the assumed certificate also had to be filed with the county clerk.

## UTAH

**Senate Bill 133**, effective May 14, 2019, amends the corporation law to establish a cause of action for oppressive conduct in a closely held corporation. “Oppressive conduct” is defined as a continuing course of conduct, a significant action, or a series of actions that substantially interferes with the interests of a shareholder as a shareholder.

## VIRGINIA

**Senate Bill 1309** (Laws of 2017), effective January 1, 2020, amends Sec. 59.1-69 of the Code of Virginia to provide that no person shall conduct or transact business in Virginia under an assumed or fictitious name unless the person files a certificate of assumed or fictitious name with the clerk of the State Corporation Commission. Under the law in effect before January 1, 2020, a person transacting business in Virginia under an assumed or fictitious name filed a certificate in the circuit court of the jurisdiction in which the name is to be used and if the person was a Virginia or foreign corporation, LLC or LP it also had to obtain a certified copy of the certificate from the circuit court and file it in the clerk’s office of the State Corporation Commission.

**House Bill 2478**, effective mostly July 1, 2019 (with some provisions effective July 1, 2020), updates and modernizes the Virginia Stock Corporation Act on issues including conversions, notices, ratification of defective acts, exclusive forum clauses, cumulative voting, derivative suits, judicial removal of directors, officer liability, activities that do not constitute doing business, and amendments.

## WASHINGTON STATE

**Senate Bill 5002**, effective July 28, 2019, amends the Corporations and Associations (Profit) title by authorizing the creation of limited cooperative associations with conforming amendments to the Business Organizations Code regarding definitions and entity names.

**Senate Bill 5003**, effective July 28, 2019, amends the Business Corporation Act regarding definitions, articles of incorporation, shareholder preemptive rights, cumulative shareholder voting, bylaws of publicly held companies and sale of assets.

## WYOMING

**House Bill 185**, effective July 1, 2019, amends the business corporation act to provide that the articles of incorporation or bylaws of a corporation may specify that all or a portion of the shares of the corporation may be represented by share certificates in the form of certificate tokens.

**House Bill 236**, effective July 1, 2019, enacts the Statutory Foundation Act, creating statutory foundations as a new form of entity.