

1 STATE OF OKLAHOMA

2 2nd Session of the 57th Legislature (2020)

3 SENATE BILL 1207

By: Bergstrom

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5
6 AS INTRODUCED

7 An Act relating to the Oklahoma Limited Liability
8 Company Act; amending 18 O.S. 2011, Sections 2001,
9 2054, 2054.1 and 2054.2, as amended by Sections 37,
10 51, 52 and 53, Chapter 323, O.S.L. 2017 (18 O.S.
11 Supp. 2019, Sections 2001, 2054, 2054.1 and 2054.2),
12 which relate to definitions, agreement of merger of
13 consolidation and conversion; modifying definitions;
14 modifying requirements for approval of certain
15 mergers or conversions; modifying certain filing
16 requirements; conforming language; updating statutory
17 language; and providing an effective date.

18 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

19 SECTION 1. AMENDATORY 18 O.S. 2011, Section 2001, as
20 amended by Section 37, Chapter 323, O.S.L. 2017 (18 O.S. Supp. 2019,
21 Section 2001), is amended to read as follows:

22 Section 2001.

23 DEFINITIONS

24 As used in the Oklahoma Limited Liability Company Act, unless
the context otherwise requires:

1 1. "Articles of organization" means documents filed for the
2 purpose of forming a limited liability company, and the articles as
3 amended;

4 2. "Bankrupt" means bankrupt under the United States Bankruptcy
5 Code, as amended, or insolvent under any state insolvency act;

6 3. "Business" means any trade, occupation, profession or other
7 activity regardless of whether engaged in for gain, profit or
8 livelihood;

9 4. "Capital contribution" means anything of value that a person
10 contributes to the limited liability company as a prerequisite for,
11 or in connection with, membership, including cash, property,
12 services rendered, or a promissory note or other binding obligation
13 to contribute cash or property or to perform services;

14 5. "Capital interest" means the fair market value as of the
15 date contributed of a member's capital contribution as adjusted for
16 any additional capital contributions or withdrawals, a person's
17 share of the profits and losses of a limited liability company and a
18 person's right to receive distributions of the limited liability
19 company's assets;

20 6. "Corporation" means a corporation formed under the laws of
21 this state or ~~a foreign corporation as defined in this section~~ the
22 laws of any jurisdiction other than this state;

23 7. "Court" includes every court and judge having jurisdiction
24 in the case;

1 8. "Foreign corporation" means a corporation formed under the
2 laws of any state jurisdiction other than this state, ~~or under the~~
3 ~~laws of the District of Columbia or any foreign country;~~

4 9. "Foreign limited liability company" means:

- 5 a. an unincorporated association,
6 b. organized under the laws of ~~a state other than the~~
7 ~~laws of any jurisdiction other than this state or~~
8 ~~organized under the laws of any foreign country,~~ and
9 c. organized under a statute pursuant to which an
10 association may be formed that affords to each of its
11 members limited liability with respect to the
12 liabilities of the entity, ~~and a limited liability~~
13 ~~company formed under the laws of any state other than~~
14 ~~this state, or under the laws of the District of~~
15 ~~Columbia or any foreign country;~~

16 10. "Foreign limited partnership" means a limited partnership
17 formed under the laws of any state jurisdiction other than this
18 state, ~~or under the laws of the District of Columbia or any foreign~~
19 ~~country;~~

20 11. "Limited liability company" or "domestic limited liability
21 company" means an entity formed under the Oklahoma Limited Liability
22 Company Act and existing under the laws of this state;
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1 12. "Limited partnership" means a limited partnership formed
2 under the laws of this state or a foreign limited partnership as
3 defined in this section;

4 13. "Manager" or "managers" means a person or persons
5 designated by the members of a limited liability company to manage
6 the limited liability company as provided in the articles of
7 organization or an operating agreement;

8 14. "Member" means a person with an ownership interest in a
9 limited liability company, with the rights and obligations specified
10 under ~~this act~~ the Oklahoma Limited Liability Company Act;

11 15. "Membership interest" or "interest" means a member's rights
12 in the limited liability company, collectively, including the
13 member's share of the profits and losses of the limited liability
14 company, the right to receive distributions of the limited liability
15 company's assets and capital interest, any right to vote or
16 participate in management, and such other rights accorded to members
17 under the articles of organization, operating agreement, or the
18 ~~Oklahoma~~ applicable Limited Liability Company Act;

19 16. "Operating agreement", regardless of whether referred to as
20 an operating agreement and whether oral, in a record, implied, or in
21 any combination thereof, means any agreement of the members,
22 including a sole member, as to the affairs of a limited liability
23 company and the conduct of its business, including the agreement as
24 amended or restated;

1 17. "Person" means an individual, a general partnership, a
2 limited partnership, a limited liability company, a trust, an
3 estate, an association, a corporation or any other legal or
4 commercial entity;

5 18. "State" means a state, territory or possession of the
6 United States, the District of Columbia, or the Commonwealth of
7 Puerto Rico; and

8 19. "Charitable entity" means any nonprofit limited liability
9 company or other entity that is exempt from taxation under Section
10 501(c)(3) of the United States Internal Revenue Code (26 U.S.C.,
11 Section 501(c)(3)), or any successor provisions.

12 SECTION 2. AMENDATORY 18 O.S. 2011, Section 2054, as
13 amended by Section 51, Chapter 323, O.S.L. 2017 (18 O.S. Supp. 2019,
14 Section 2054), is amended to read as follows:

15 Section 2054.

16 AGREEMENT OF MERGER OF CONSOLIDATION

17 A. Pursuant to an agreement of merger or consolidation, a
18 domestic limited liability company may merge or consolidate with or
19 into one or more domestic or foreign limited liability companies or
20 other entities. As used in this section, "entity" means a domestic
21 or foreign corporation, a domestic or foreign partnership whether
22 general or limited, ~~and~~ including a limited liability partnership
23 and a limited liability limited partnership, a domestic or foreign
24 limited liability company, and any domestic or foreign

1 unincorporated nonprofit or for-profit association, trust or
2 enterprise having members or having outstanding shares of stock or
3 other evidences of financial, beneficial or membership interest
4 therein, whether formed by agreement or under statutory authority or
5 otherwise.

6 B. Unless otherwise provided in the articles of organization or
7 the operating agreement, a merger or consolidation shall be approved
8 by each ~~domestic~~ limited liability company which is to merge or
9 consolidate by a majority of the membership interest or, if there is
10 more than one class or group of members, then by a majority of the
11 membership interest of each class or group. In connection with a
12 merger or consolidation hereunder, rights or securities of, or
13 memberships or membership, economic or ownership interests in, a
14 domestic limited liability company or other domestic or foreign
15 entity which is a constituent party to the merger or consolidation
16 may be exchanged for or converted into cash, property, rights or
17 securities of, or memberships or membership, economic or ownership
18 interests in, the surviving or resulting ~~domestic~~ limited liability
19 company or other entity or, in addition to or in lieu thereof, may
20 be exchanged for or converted into cash, property, rights or
21 securities of, or memberships or membership, economic or ownership
22 interests in, a ~~domestic~~ limited liability company or other entity
23 which is not the surviving or resulting limited liability company or
24 other entity in the merger or consolidation. Notwithstanding prior

1 approval, an agreement of merger or consolidation may be terminated
2 or amended pursuant to a provision for such termination or amendment
3 contained in the agreement of merger or consolidation.

4 C. If a domestic limited liability company is merging or
5 consolidating pursuant to this section, the domestic limited
6 liability company or other entity surviving or resulting in or from
7 the merger or consolidation shall file articles of merger or
8 consolidation with the Office of the Secretary of State. The
9 articles of merger or consolidation shall state:

10 1. The name, jurisdiction of formation or organization, and
11 type of entity of each of the limited liability companies or other
12 entities which are to merge or consolidate;

13 2. That an agreement of merger or consolidation has been
14 approved and executed by each of the domestic limited liability
15 companies or other entities which is to merge or consolidate;

16 3. The name of the surviving or resulting domestic limited
17 liability company or other entity;

18 4. The future effective date or time, which shall be a specific
19 date or time not later than a time on the ninetieth day after the
20 filing, of the merger or consolidation if it is not to be effective
21 upon the filing of the articles of merger or consolidation;

22 5. That the agreement of merger or consolidation is on file at
23 a place of business of the surviving or resulting domestic limited
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1 liability company or other entity, and shall state the street
2 address thereof;

3 6. That a copy of the agreement of merger or consolidation
4 shall be furnished by the surviving or resulting domestic limited
5 liability company or other entity, upon request and without cost, to
6 any member of any domestic limited liability company or any person
7 holding a membership or membership, economic or ownership interest
8 in any other entity which is to merge or consolidate;

9 7. In the case of a merger, any amendments or changes in the
10 articles of organization of the surviving domestic limited liability
11 company that are to be effected by the merger, which amendments or
12 changes may amend and restate the articles of organization of the
13 surviving domestic limited liability company in its entirety;

14 8. In the case of a consolidation, that the articles of
15 organization of the resulting domestic limited liability company
16 shall be as set forth in an attachment to the articles of
17 consolidation; and

18 9. If the surviving or resulting entity is not a domestic
19 limited liability company or entity formed or organized pursuant to
20 the laws of this state, the resulting entity shall file a statement
21 that the surviving or resulting other entity agrees to be served
22 with process in this state in any action, suit, or proceeding for
23 the enforcement of any obligation of any domestic limited liability
24 company which is to merge or consolidate; the resulting entity

1 irrevocably appoints the Secretary of State as its agent to accept
2 service of process in any action, suit, or proceeding; and specifies
3 the street address to which process shall be mailed to the resulting
4 entity by the Secretary of State.

5 D. Any failure to file the articles of merger or consolidation
6 in connection with a merger or consolidation which was effective
7 prior to September 1, 1992, shall not affect the validity or
8 effectiveness of any such merger or consolidation.

9 A merger or consolidation shall be effective upon the filing
10 with the Secretary of State of articles of merger or consolidation,
11 unless a future effective date or time is provided in the articles
12 of merger or consolidation.

13 E. Articles of merger or consolidation terminate the separate
14 existence of a domestic limited liability company which is not the
15 surviving or resulting entity in the merger or consolidation.

16 F. Once any merger or consolidation is effective pursuant to
17 this section, for all purposes of the laws of this state, all of the
18 rights, privileges, and powers of each of the ~~domestic~~ limited
19 liability companies and other entities that have merged or
20 consolidated and all property, real, personal, and mixed, and all
21 debts due to each ~~domestic~~ limited liability company or other
22 entity, as well as all other things and causes of action belonging
23 to each ~~domestic~~ limited liability company or other entity shall be
24 vested in the surviving or resulting domestic or foreign limited

1 liability company or other entity, and shall thereafter be the
2 property of the surviving or resulting domestic or foreign limited
3 liability company or other entity as they were of each ~~domestic~~
4 limited liability company or other entity that has merged or
5 consolidated, and the title to any real property vested by deed or
6 otherwise, under the laws of this state, in any domestic limited
7 liability company or other entity shall not revert or be in any way
8 impaired by reason of this section, but all rights of creditors and
9 all liens upon any property of each domestic limited liability
10 company or other entity shall be preserved unimpaired. All debts,
11 liabilities and duties of each domestic or foreign limited liability
12 company or other entity that has merged or consolidated shall
13 thereafter attach to the surviving or resulting ~~domestic~~ limited
14 liability company or other entity, and may be enforced against the
15 surviving or resulting limited liability company or other entity to
16 the same extent as if the debts, liabilities, and duties had been
17 incurred or contracted by the surviving or resulting limited
18 liability company or other entity. Unless otherwise agreed, a
19 merger or consolidation of a ~~domestic~~ limited liability company,
20 including a ~~domestic~~ limited liability company which is not the
21 surviving or resulting entity in the merger or consolidation, shall
22 not require the ~~domestic~~ limited liability company to wind up its
23 affairs or pay its liabilities and distribute its assets.

1 G. Nothing in this section shall be deemed to authorize the
2 merger of a charitable entity into another entity, if the charitable
3 status of such entity would thereby be lost or impaired.

4 SECTION 3. AMENDATORY 18 O.S. 2011, Section 2054.1, as
5 amended by Section 52, Chapter 323, O.S.L. 2017 (18 O.S. Supp. 2019,
6 Section 2054.1), is amended to read as follows:

7 Section 2054.1.

8 CONVERSION OF AN ENTITY TO A LIMITED LIABILITY COMPANY

9 A. As used in this section, the term "entity" means a domestic
10 or foreign corporation, a domestic or foreign partnership whether
11 general or limited, and including a limited liability partnership
12 and a limited liability limited partnership, and any domestic or
13 foreign unincorporated nonprofit or for-profit association, trust or
14 enterprise having members or having outstanding shares of stock or
15 other evidences of financial, beneficial or membership interest
16 therein, whether formed by agreement or under statutory authority or
17 otherwise.

18 B. Any entity may convert to a domestic limited liability
19 company by complying with subsection H of this section and filing
20 with the Secretary of State in accordance with Section 2007 of this
21 title articles of conversion to a limited liability company that
22 have been executed in accordance with Section 2006 of this title, to
23 which shall be attached articles of organization that comply with
24 Sections 2005 and 2008 of this title and have been executed by one

1 or more authorized persons in accordance with Section 2006 of this
2 title.

3 C. The articles of conversion to a limited liability company
4 shall state:

5 1. The date on which the entity was first formed;

6 2. The name, jurisdiction of formation of the entity, and type
7 of entity when formed and, if changed, its name, jurisdiction, and
8 type of entity immediately before filing of the articles of
9 conversion to limited liability company;

10 3. The name of the limited liability company as set forth in
11 its articles of organization filed in accordance with subsection B
12 of this section; and

13 4. The future effective date or time of the conversion to a
14 limited liability company, which shall be a date or time certain not
15 later than ninety (90) days after the filing, if it is not to be
16 effective upon the filing of the articles of conversion to a limited
17 liability company and the articles of organization.

18 D. Upon the effective date or time of the articles of
19 conversion to limited liability company and the articles of
20 organization, the entity shall be converted to a domestic limited
21 liability company and the limited liability company shall thereafter
22 be subject to all of the provisions of the Oklahoma Limited
23 Liability Company Act, except that notwithstanding Section 2004 of
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1 this title, the existence of the limited liability company shall be
2 deemed to have commenced on the date the entity was formed.

3 E. The conversion of any entity into a domestic limited
4 liability company shall not be deemed to affect any obligations or
5 liabilities of the entity incurred before its conversion to a
6 domestic limited liability company or the personal liability of any
7 person incurred before the conversion.

8 F. When an entity has converted to a domestic limited liability
9 company under this section, the domestic limited liability company
10 shall be deemed to be the same entity as the converting entity. All
11 of the rights, privileges and powers of the entity that has
12 converted, and all property, real, personal and mixed, and all debts
13 due to the entity, as well as all other things and causes of action
14 belonging to the entity, shall remain vested in the domestic limited
15 liability company and shall be the property of the domestic limited
16 liability company, and the title to any real property vested by deed
17 or otherwise in the entity shall not revert or be in any way
18 impaired by reason of the conversion, but all rights of creditors
19 and all liens upon any property of the entity shall be preserved
20 unimpaired, and all debts, liabilities and duties of the entity that
21 has converted shall remain attached to the domestic limited
22 liability company and may be enforced against it to the same extent
23 as if the debts, liabilities and duties had been incurred or
24 contracted by it in its capacity as a domestic limited liability

1 company. The rights, privileges, powers and interests in property
2 of the entity, as well as the debts, liabilities and duties of the
3 entity, shall not be deemed, as a consequence of the conversion, to
4 have been transferred to the domestic limited liability company to
5 which the entity has converted for any purpose of the laws of this
6 state.

7 G. Unless otherwise agreed or otherwise provided by any laws of
8 this state applicable to the converting entity, the converting
9 entity shall not be required to wind up its affairs or pay its
10 liabilities and distribute its assets, and the conversion shall not
11 be deemed to constitute a dissolution of the entity and shall
12 constitute a continuation of the existence of the converting entity
13 in the form of a domestic limited liability company.

14 H. Before filing the articles of conversion to a domestic
15 limited liability company with the Office of the Secretary of State,
16 the conversion shall be approved in the manner provided for by the
17 document, instrument, agreement or other writing, as the case may
18 be, governing the internal affairs of the entity and the conduct of
19 its business or by applicable law, as appropriate, and articles of
20 organization shall be approved by the same authorization required to
21 approve the conversion.

22 I. In a conversion of an entity to a domestic limited liability
23 company under this section, rights or securities of or memberships
24 or membership, economic or ownership interests in the entity that is

1 to be converted to a domestic limited liability company may be
2 exchanged for or converted into cash, property, or rights or
3 securities of or interests in the domestic limited liability company
4 or, in addition to or in lieu thereof, may be exchanged for or
5 converted into cash, property or rights or securities of or
6 memberships or membership, economic or ownership interests in
7 another ~~domestic~~ limited liability company or other entity.

8 J. The provisions of this section shall not be construed to
9 limit the accomplishment of a change in the law governing, or the
10 domicile of, an entity to this state by any other means provided for
11 in an operating agreement or other agreement or as otherwise
12 permitted by law, including by the amendment of an operating
13 agreement or other agreement.

14 K. Nothing in this section shall be deemed to authorize the
15 conversion of a charitable entity into a domestic limited liability
16 company, if the charitable status of such entity would thereby be
17 lost or impaired.

18 SECTION 4. AMENDATORY 18 O.S. 2011, Section 2054.2, as
19 amended by Section 53, Chapter 323, O.S.L. 2017 (18 O.S. Supp. 2019,
20 Section 2054.2), is amended to read as follows:

21 Section 2054.2.

22 CONVERSION OF A LIMITED LIABILITY COMPANY TO AN ENTITY

23 A. A domestic limited liability company may convert to an
24 entity upon the authorization of such conversion in accordance with
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1 this section. As used in this section, the term "entity" means a
2 domestic or foreign corporation, a domestic or foreign partnership
3 whether general or limited, ~~and~~ including a limited liability
4 partnership and a limited liability limited partnership, a domestic
5 or foreign limited liability company, and any domestic or foreign
6 unincorporated nonprofit or for-profit association, trust or
7 enterprise having members or having outstanding shares of stock or
8 other evidences of financial, beneficial or membership interest
9 therein, whether formed by agreement or under statutory authority or
10 otherwise.

11 B. If the operating agreement specifies the manner of
12 authorizing a conversion of the limited liability company, the
13 conversion shall be authorized as specified in the operating
14 agreement.

15 C. If the operating agreement does not specify the manner of
16 authorizing a conversion of the limited liability company and does
17 not prohibit a conversion of the limited liability company, the
18 conversion shall be authorized in the same manner as is specified in
19 the operating agreement for authorizing a merger or consolidation
20 that involves the limited liability company as a constituent party
21 to a merger or consolidation.

22 D. If the operating agreement does not specify the manner of
23 authorizing a conversion of the limited liability company or a
24 merger or consolidation that involves the limited liability company

1 as a constituent party and does not prohibit a conversion of the
2 limited liability company, the conversion shall be authorized by the
3 approval of a majority of the membership interest or, if there is
4 more than one class or group of members, then by a majority of the
5 membership interest in each class or group of members.

6 Notwithstanding the foregoing, in addition to any other
7 authorization required by this section, if the entity into which the
8 limited liability company is to convert does not afford all of its
9 interest holders protection against personal liability for the debts
10 of the entity, the conversion must be authorized by any and all
11 members who would be exposed to personal liability.

12 E. Unless otherwise agreed, the conversion of a domestic
13 limited liability company to another entity pursuant to this section
14 shall not require the limited liability company to wind up its
15 affairs or pay its liabilities and distribute its assets, and the
16 conversion shall not constitute a dissolution of the limited
17 liability company.

18 F. In a conversion of a domestic limited liability company to
19 an entity under this section, rights or securities of or interests
20 in the domestic limited liability company which are to be converted
21 may be exchanged for or converted into cash, property, rights or
22 securities of or memberships or membership, economic or ownership
23 interests in the entity to which the domestic limited liability
24 company is being converted or, in addition to or in lieu thereof,

1 may be exchanged for or converted into cash, property, rights or
2 securities of or memberships or membership, economic or ownership
3 interests in another entity or may be canceled.

4 G. If the governing act of ~~the~~ a domestic entity to which the
5 limited liability company is converting does not provide for the
6 filing of a conversion notice with the Secretary of State or the
7 limited liability company is converting to a foreign entity,
8 articles of conversion executed in accordance with Section 2006 of
9 this title, shall be filed in the Office of the Secretary of State
10 in accordance with Section 2007 of this title. The articles of
11 conversion shall state:

12 1. The name of the limited liability company and, if it has
13 been changed, the name under which its articles of organization were
14 originally filed;

15 2. The date of filing of its original articles of organization
16 with the Secretary of State;

17 3. The name and type of entity to which the limited liability
18 company is converting and its jurisdiction of formation, if a
19 foreign entity;

20 4. The future effective date or time of the conversion, which
21 shall be a date or time certain not later than ninety (90) days
22 after the filing, if it is not to be effective upon the filing of
23 the articles of conversion;

1 5. That the conversion has been approved in accordance with
2 this section;

3 6. The agreement of the foreign entity that it may be served
4 with process in this state in any action, suit or proceeding for
5 enforcement of any obligation of the foreign entity arising while it
6 was a domestic limited liability company, and that it irrevocably
7 appoints the Secretary of State as its agent to accept service of
8 process in any such action, suit or proceeding, and its street
9 address to which a copy of the process shall be mailed to it by the
10 Secretary of State; and

11 7. If the domestic entity to which the domestic limited
12 liability company is converting was required to make a filing with
13 the Secretary of State as a condition of its formation, the type and
14 date of such filing.

15 H. Upon the filing of a conversion notice with the Secretary of
16 State, ~~whether under subsection G of this section or under the~~
17 ~~governing act of the domestic entity to which the limited liability~~
18 ~~company is converting,~~ the filing of any formation document required
19 by the governing act of the domestic entity to which the limited
20 liability company is converting, and payment to the Secretary of
21 State of all prescribed fees, the Secretary of State shall certify
22 that the limited liability company has filed all documents and paid
23 all required fees, and thereupon the domestic limited liability
24 company shall cease to exist as a limited liability company of this

1 state. The Secretary of State's certificate shall be prima facie
2 evidence of the conversion by the domestic limited liability
3 company.

4 I. The conversion of a domestic limited liability company to an
5 a domestic or foreign entity under this section and the resulting
6 cessation of its existence as a domestic limited liability company
7 shall not be deemed to affect any obligations or liabilities of the
8 domestic limited liability company incurred before the conversion or
9 the personal liability of any person incurred before the conversion,
10 nor shall it be deemed to affect the choice of law applicable to the
11 domestic limited liability company with respect to matters arising
12 before the conversion.

13 J. When a domestic limited liability company has converted to
14 an entity under this section, the entity shall be deemed to be the
15 same entity as the limited liability company. All of the rights,
16 privileges and powers of the domestic limited liability company that
17 has converted, and all property, real, personal and mixed, and all
18 debts due to the limited liability company, as well as all other
19 things and causes of action belonging to the limited liability
20 company, shall remain vested in the entity to which the limited
21 liability company has converted and shall be the property of the
22 entity, and the title to any real property vested by deed or
23 otherwise in the domestic limited liability company shall not revert
24 or be in any way impaired by reason of the conversion; but all

1 rights of creditors and all liens upon any property of the limited
2 liability company shall be preserved unimpaired, and all debts,
3 liabilities and duties of the limited liability company that has
4 converted shall remain attached to the entity to which the limited
5 liability company has converted, and may be enforced against it to
6 the same extent as if ~~said~~ the debts, liabilities and duties had
7 originally been incurred or contracted by it in its capacity as the
8 entity. ~~The rights, privileges, powers and interests in property of~~
9 ~~the limited liability company that has converted, as well as the~~
10 ~~debts, liabilities and duties of the limited liability company,~~
11 ~~shall not be deemed, as a consequence of the conversion, to have~~
12 ~~been transferred to the entity to which the limited liability~~
13 ~~company has converted for any purpose of the laws of this state.~~

14 K. Nothing in this section shall be deemed to authorize the
15 conversion of a charitable domestic limited liability company into
16 another entity, if the charitable status of such domestic limited
17 liability company would thereby be lost or impaired.

18 SECTION 5. This act shall become effective November 1, 2020.

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