

THE MODEL ENTITY TRANSACTION ACT: A STEP TOWARD IMPROVING ARIZONA’S BUSINESS ENVIRONMENT

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In 2014, the Arizona State Legislature passed the Arizona Entity Restructuring Act (“AERA”), overhauling Arizona’s entity-level transaction statutes. AERA organizes, simplifies, and expands Arizona’s entity-level transaction procedures. This Note will cover AERA’s development, its broadly inclusive definition of “entity,” the five specific transactions it permits, and why AERA is the first step toward a more business-friendly Arizona.

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INTRODUCTION

“Why do corporations choose Delaware?”¹ Delaware’s advanced and flexible corporations law, business-savvy courts, and state legislature are some of

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1. LEWIS S. BLACK, JR., WHY CORPORATIONS CHOOSE DELAWARE 1 (2007).

the most-cited reasons.² Corporations and other business entities are attracted to states whose laws, among other things, provide the freedom to transact quickly and efficiently. With this in mind, the Arizona State Legislature passed the Arizona Entity Restructuring Act (“AERA”) in 2014. By reducing transaction costs and increasing business freedom, AERA is a step toward a more business-friendly Arizona.

As of 2013, Arizona experienced higher unemployment rates than the United States overall and continued to experience a 2.1% net job loss relative to pre-recession levels—conversely, the United States as a whole has experienced a net job gain of 1.8% relative to pre-recession levels.³ High-wage sectors make up a smaller portion of Arizona’s industrial composition than the national average, while sectors that pay average to below-average wages make up a larger portion of Arizona’s industrial composition than the national average.⁴ As a result, in 2013 the average earnings per employee in Arizona were 10.4% less than the national average.⁵ Additionally, even though Arizona was the 15th most populous state in the country in 2014,⁶ only five Fortune 500 companies⁷ and 2% of the Inc. 5,000⁸ were organized in Arizona. Business-friendly laws, like AERA, have the potential to lure entrepreneurs and existing business owners to Arizona, and this increase will lead to more employment opportunities particularly high-wage employment opportunities.⁹

This Note proceeds in three parts. Part I explains the history and policy objectives behind AERA, and details the transactions entities may engage in under the new law. Part II examines two barriers AERA must overcome before it is able to reduce transaction costs, and encourage corporations and other business entities to organize in Arizona. Lastly, Part III predicts that AERA is simply one of a number of improvements that Arizona will make in order to revitalize the business environment in the state. Part III provides specific examples of some of the other projects that Arizona has undertaken to accomplish this goal.

2. *Id.*

3. Joint Econ. Comm., U.S. Cong., Economic Snapshot: Arizona 2 (2015).

4. *Industrial Composition*, ARIZONA INDICATORS, <http://arizonaindicators.org/economy/industrial-composition> (last updated Jan. 23, 2015).

5. *Id.*

6. U.S. CENSUS BUREAU, U.S. DEP’T OF COMMERCE, 2014 POPULATIONS ESTIMATES (2014), *available at* <http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk>.

7. Mike Sunnucks, *Only 5 Arizona Companies Make Fortune 500 List After Loss of US Airways*, PHX. BUS. J. (June 2, 2014, 4:00 PM), <http://www.bizjournals.com/phoenix/news/2014/06/02/only-5-arizona-companies-make-fortune-500-list.html>.

8. *The 2014 Inc. 5000*, INC., <http://www.inc.com/inc5000/list/2014/> (last visited Apr. 5, 2015).

9. See Russ Wiles, *PetSmart Deal Further Thins Arizona’s Corporate Ranks*, USA TODAY (Dec. 16, 2014, 7:20 AM), <http://www.usatoday.com/story/money/business/2014/12/16/arizona-petsmart-mergers-acquisitions/20469543/> (noting that “losing a corporate headquarters, often leav[es] the state with fewer high-paying jobs, less corporate involvement in the local community and diminished visibility in business circles”).

By aiming to reduce entity-level transaction costs and increase business freedom in the state, AERA simplifies, organizes, and expands Arizona's entity-level transaction statutes. Before entrepreneurs, existing business owners, and attorneys choose where to organize a particular business entity, they should consider AERA and the goals AERA's drafters sought to accomplish with its provisions, as these goals provide insight into the ongoing evolution of Arizona's business environment. Ultimately, as a result of AERA and other forthcoming changes to Arizona's business landscape, the number of entrepreneurs and existing business owners that choose to organize in Arizona should increase.

I. THE ARIZONA ENTITY RESTRUCTURING ACT REVAMPS ARIZONA'S ENTITY-LEVEL TRANSACTIONS STATUTES

In 2010, in response to concerns that Arizona's entity-restructuring laws had become outdated compared to those in other states,¹⁰ the Business Law Section¹¹ of the State Bar of Arizona formed the Mergers and Conversions Committee in order to overhaul Arizona's entity-level restructuring statutes.¹² Shortly after the Committee was formed, the group decided on the Model Entity Transactions Act ("Model Act") as a template for Arizona's new entity-transaction statutes.¹³ The National Conference of Commissioners on Uniform State Laws drafted the Model Act in order to provide a comprehensive statutory framework for changing the form of an entity via a merger, conversion, interest exchange, or domestication.¹⁴ The Model Act simplifies the process for engaging in each of these transactions, eliminating unnecessary steps that discouraged certain entities from transacting altogether.¹⁵ Further, the Model Act enables all entities to engage in all relevant transaction types, rather than precluding certain entities from

10. Interview with Terence W. Thompson, Co-Chair, Mergers & Conversions Comm., in Phx., Ariz. (Jan. 7, 2015) [hereinafter Thompson, Interview] (explaining that before AERA, Arizona's entity-level restructuring statutes had become outdated in our present economy, but have become the vanguard of Arizona entity-level restructuring statutes).

11. The purpose of the Business Law Section of the State Bar of Arizona is to "further the development of [business law] and all its branches to cooperate in obtaining uniformity with respect to both legislation and administration in all matters within [business law and] to simplify and improve the application of justice in [business law]." *Business Law Mission*, STATE BAR OF ARIZONA, <http://www.azbar.org/sectionsandcommittees/sections/businesslaw> (last visited Jan. 5, 2015).

12. Thompson, Interview, *supra* note 10.

13. MODEL ENTITY TRANSACTIONS ACT (2007), available at http://www.uniformlaws.org/shared/docs/entity_transactions/meta_final_2014.pdf; Terence W. Thompson et al., *Mergers, Interest Exchanges, Conversions, Domestications and Divisions*, in CORPORATE PRACTICE § 14:2 (2014). The Model Act was last modified in 2007 and is promulgated jointly by the American Bar Association and the National Conference of Commissioners on Uniform State Laws. *Id.*

14. COUNCIL OF STATE GOV'T, *Model Entity Transactions Act*, in 2011 SUGGESTED STATE LEGISLATION 98, available at <http://ssl.csg.org/dockets/2011cycle/2011volume/2011volumedrafts/modelentitytransactions2011vol.pdf>.

15. *Id.*

engaging in certain transactions.¹⁶ For instance, very few states allow corporations to convert into another entity type or to domesticate in another state, something that is allowed under the Model Act.¹⁷ The Model Act also provides a simple framework for entities of different types to engage in these transactions with one another—known as “cross-entity transactions.” In sum, “[t]he point of the procedures [in the Model Act] is to end with an entity that continues the business of those entities it succeeds without extinguishing obligations incurred by these entities in a seamless, nondisruptive transfer.”¹⁸ With the Model Act’s policies and principles in mind, the Arizona committee sought to design a statute tailored to Arizona’s unique needs that similarly reduced costs, increased efficiency, and expanded business freedom.¹⁹

AERA was drafted and designed to correct three deficiencies in Arizona’s previous entity-level transactions statutes.²⁰ First, AERA organizes the entity-level transactions statutes—mergers, interest exchanges, conversions, domestications and divisions—into a single location, making it easier for out-of-state business owners and attorneys to locate the steps required to complete a particular transaction in Arizona.²¹ Second, AERA allows both foreign and domestic entities to engage in a broader range of transactions within the state of Arizona, increasing business freedom and flexibility.²² And third, AERA standardizes the procedural requirements for entity-level transactions across all entity types, simplifying cross-entity transactions.²³ In addition to correcting the law’s preexisting deficiencies, the drafters intended the statute to be inclusive, applying to all organizations that fall under AERA’s broad definition of what constitutes an “entity.”²⁴ In 2014, the

16. *Id.* For a general description of the limitation placed on certain entities before AERA, see Email from Raj Gangadean, Co-Chair, Mergers & Conversions Comm., Bus. Law Section, State Bar of Ariz., to author (Jan. 5, 2015, 1:50PM MST) (on file with author) (explaining that there is no justification for Arizona permitting transactions for certain entity types but not for others).

17. COUNCIL OF STATE GOV’T, *supra* note 14, at 99.

18. *Id.* For example, Connecticut enacted the Connecticut Entity Transactions Act, which is based on the Model Act, because it created an “efficient” way for businesses to engage in new transactions. *April 2014-Connecticut Entity Transactions Act*, Murtha Cullina (Apr. 23, 2014), http://www.murthalaw.com/news_alerts/1385-april---connecticut-entity-transactions-act.

19. Thompson et al., *supra* note 13 (“[C]onsiderations to Arizona—such as the allocation of filing authority between the Arizona Corporation Commission and the Arizona Secretary of State depending on the type of entity—required that the Arizona statute vary from the Model Act in certain respects.”).

20. Gangadean, *supra* note 16.

21. *Id.*

22. *Id.*

23. *Id.*

24. Arizona Entity Restructuring Act, 2014 Ariz. Legis. Serv. Ch. 193 (West); Thompson et al., *supra* note 13, § 14:6. Terence Thompson, who worked on the statute, also noted that its drafters intended for the statute to apply broadly. Thompson, Interview, *supra* note 10. Hence, the statute is written to include *any* type of recognized entity. *Id.*

bill passed without a single nay vote in either chamber,²⁵ and on January 1, 2015, AERA took effect.

A. *What Is an Entity?*

AERA permits mergers, interest exchanges, conversions, domestications, and divisions by organizations defined in the statute as “entit[ies].”²⁶ AERA’s definition of “entity” includes: corporations, partnerships, limited liability companies (“LLCs”), business trusts, unincorporated associations, and cooperatives.²⁷ “Any other person that has a separate legal existence or has the power to acquire an interest in real property in its own name” is also an “entity” under AERA’s broad “catch-all” provision.²⁸ Hence, under AERA’s inclusive concept of what constitutes an “entity,” a wide variety of organizations can engage in mergers, interest exchanges, conversions, domestications, and divisions in the state of Arizona.

25. *Bill Status Overview*, ARIZ. STATE LEGISLATURE, http://www.azleg.gov/FormatDocument.asp?inDoc=/legtext/51leg/2r/bills/sb1353o.asp&Session_ID=112 (last visited Jan. 5, 2015).

26. ARIZ. REV. STAT. ANN. § 29-2102(17) (2015).

27. *Id.* § 29-2102(a)–(g). Unlike the Model Act, AERA defines business corporations and for-profit corporations for purposes of the statute in order to ensure that AERA recognizes the wide variety of for-profit corporations that states, including Arizona, allow. Thompson et al., *supra* note 13, § 14:6 (2014). “Corporation means a business corporation or a nonprofit corporation.” ARIZ. REV. STAT. ANN. § 29-2102(10). “Business corporation means a business corporation, a close corporation, a professional corporation, a business development corporation and a benefit corporation.” *Id.* § 29-2102(5). “Nonprofit corporation means a nonprofit corporation, a cooperative marketing association, an electric cooperative nonprofit membership corporation, a nonprofit electric generation and transmission cooperative corporation, a fraternal or benevolent society or a corporation sole.” *Id.* § 29-2102(31). Lastly, a “cooperative,” though not defined by AERA or the Model Act, is generally a “self-organized collective undertaking by similarly situated people who pool financial resources to procure goods or services, govern the undertaking based on democratic principles, and operate on a nonprofit basis.” Thompson et al., *supra* note 13, § 14:6.

28. ARIZ. REV. STAT. ANN. § 29-2102(17)(h); *see also* Thompson et al., *supra* note 13, § 14:6 (noting that the “workhorse of AERA’s definition of ‘entity’ is the ‘catchall’ provision”). AERA excludes only four things from its definition of “entity”: (1) an individual; (2) a testamentary, inter vivos, or charitable trust; (3) a decedent’s estate; and (4) a governmental body. ARIZ. REV. STAT. ANN. § 29102(17)(h)(i)–(iv). Under the Model Act, the exclusion of individuals from the Act’s definition of “entity” bars sole proprietorships from engaging in any one of transactions provided for in the Act. Thompson et al., *supra* note 13, § 14:6. Under Arizona law, however, it is possible that a sole proprietorship could be included within AERA’s concept of “entity.” *Id.* Specifically, a “proprietorship might be a large and long-standing business operation, using one or more trade names as its face to the world, with numerous employees or ‘associates,’ multiple locations, diverse products or services, and an array of assets, contracts, and obligations,” in which case it could be viewed as an “unincorporated association.” *Id.*

B. Mergers, Interest Exchanges, Conversions, and Domestications

Under AERA, one or more foreign or domestic entities may merge with one or more other foreign or domestic entities, so long as any foreign entity that is a party to the merger is permitted to do so by the laws in its jurisdiction.²⁹ A “merger” is defined as an entity-level transaction in which “two [or more] entities combine into one, and the rights and obligations of each merging entity become the rights and obligations of the surviving entity.”³⁰

AERA also permits domestic and foreign entities to engage in interest exchanges with one another so long as the law that governs the foreign entity permits the foreign entity to engage in interest exchanges.³¹ Interest exchanges involve one entity acquiring all of the interests in another entity, making the acquired entity a wholly owned subsidiary of the acquiring entity.³² Specifically, AERA permits one Arizona entity to acquire all of one or more classes of interest of a domestic or foreign entity.³³ AERA also allows a domestic or foreign entity to acquire all of one or more classes of interest of an Arizona entity.³⁴ For example, an Arizona entity could acquire all of the shares of stock of an Arizona corporation, an Arizona LLC, a California partnership, or a membership interest in an Australia nonprofit corporation.³⁵

In addition to mergers and interest exchanges, AERA also permits entities to seamlessly convert to an entity of a different type.³⁶ In a conversion, an entity of one type converts to an entity of another type.³⁷ Specifically, under AERA’s conversion provision, not only may an existing Arizona entity change its type, but a non-Arizona entity may also change its structure and domesticate in Arizona.³⁸ For instance, an Arizona LLC that wished to incorporate could do so under AERA. Similarly, a Pennsylvania LLC could incorporate in Arizona under AERA.³⁹

A separate section of AERA permits entities to domesticate.⁴⁰ In a domestication, a foreign entity may change its domicile to Arizona, or vice versa.⁴¹

29. ARIZ. REV. STAT. ANN. § 29-2201(A)–(B). “[A] domestic entity means an entity formed under the laws of Arizona governing that type of entity.” Thompson et al., *supra* note 13, § 14:5. “[A] foreign entity means an entity formed under the laws of some other state or country.” *Id.*

30. Gangadean, *supra* note 16.

31. ARIZ. REV. STAT. ANN. § 29-2301 (2015).

32. Gangadean, *supra* note 16.

33. Thompson et al., *supra* note 13, § 14:30.

34. *Id.*

35. *Id.* But keep in mind that a foreign entity may acquire a domestic entity in Arizona only if the law of the foreign entity’s jurisdiction permits that foreign entity to do so. *Id.*

36. ARIZ. REV. STAT. ANN. § 29-2401 (2015).

37. Gangadean, *supra* note 16 (“For example, if authorized by the laws of the relevant foreign jurisdictions, a conversion under AERA could involve a Delaware corporation converting into an Arizona limited liability company, or it could involve an Arizona corporation converting into a Nevada limited partnership.”).

38. Thompson et al., *supra* note 13, § 14:30.

39. *See id.*

40. ARIZ. REV. STAT. ANN. § 29-2501 (2015).

For example, an Arizona corporation may become a California corporation, and a Nevada corporation may become an Arizona corporation so long as Nevada law permits it to do so.⁴² Significantly, while domestication has existed for some time as a type of entity-level transaction, AERA eliminates unnecessary steps that Arizona entity-transaction statutes once required. For instance, in order to domesticate a Delaware LLC into an Arizona LLC, Arizona entity-transaction statutes used to require the Delaware LLC first to form an Arizona LLC, and then merge the Delaware LLC with the Arizona LLC.⁴³ According to Raj Gangadean, co-chair of the Merger and Conversion Committee, now “this transaction [can] be accomplished without the unnecessary complexity and extra steps.”⁴⁴

C. Divisions

With AERA, Arizona became the first state explicitly to allow entities to engage in divisions.⁴⁵ In fact, even the Model Act upon which AERA was based does not include divisions among the transactions that it facilitates.⁴⁶ The drafters of AERA made the decision to include divisions based, in part, on their belief that allowing entities to divide could unlock value.⁴⁷ Consider, for example, the relationship between eBay and PayPal. Since 2002, PayPal has been subsidiary of eBay.⁴⁸ In 2014, despite PayPal’s success, superstar investor Carl Icahn said, “PayPal’s a jewel and eBay is covering up its value.”⁴⁹ Similarly, Elon Musk, cofounder of PayPal and current head of Tesla Motors and SpaceX, was quoted as saying: “[PayPal] will get cut to pieces by Amazon payments or by other systems like Apple and startups if it continues to be part of eBay It will either wither or be spun out.”⁵⁰ In 2014, eBay answered these concerns and announced that it would split from PayPal.⁵¹ Analysts speculate that the split will allow PayPal to reach its full growth potential because PayPal will be able to focus solely on

41. Gangadean, *supra* note 16.

42. Thompson et al., *supra* note 13, § 14:50.

43. Gangadean, *supra* note 16.

44. *Id.*

45. ARIZ. REV. STAT. ANN. § 29-2501. To date, since Arizona introduced divisions in AERA on January 1, 2015, only Pennsylvania has followed Arizona’s lead. See Perry Patterson, Thomas Thompson & Adam Wicks, *Pennsylvania Significantly Updates Laws Governing M&A/Conversion*, JD SUPRA BUS. ADVISOR (Nov. 19, 2014), <http://www.jdsupra.com/legalnews/pennsylvania-significantly-updates-laws-75008/>.

46. See MODEL ENTITY TRANSACTIONS ACT 2 (2007) (listing only mergers, interest exchanges, conversions, and domestications as transactions that fall within the scope of the act; not divisions).

47. Thompson, Interview, *supra* note 10 (explaining that divisions have the potential to unlock value).

48. Margaret Kane, *eBay Picks up PayPal for \$1.5 Billion*, CNET (July 8, 2002, 8:00 AM), <http://news.cnet.com/2100-1017-941964.html>.

49. *Id.*

50. Steven Bertoni, *Ebay and PayPal to Split: Carl Icahn and Elon Musk Wish Comes True*, FORBES (Sept. 30, 2014, 9:14 AM), <http://www.forbes.com/sites/stevenbertoni/2014/09/30/ebay-and-paypal-to-split-carl-icahn-and-elon-musk-wish-comes-true/>.

51. *Id.*

payment systems, where it currently holds a distinct competitive advantage.⁵² Additionally, because PayPal will no longer be a subsidiary of eBay, the move should help PayPal attract top executive talent, as “few CEO types want to run a subsidiary of a larger company.”⁵³ Therefore, to the extent that AERA’s division provision makes it easier for entities to spin off, and decreases the tax consequences entities suffer as a result of a spin-off, it is likely to have a positive effect on Arizona’s economy. Since Arizona introduced divisions in AERA, Pennsylvania has followed its lead,⁵⁴ and other states may too.

An AERA division results in a single entity dividing into two or more entities, leaving the rights and obligations of the dividing entity to be allocated among the surviving entities.⁵⁵ Put simply, “divisions are essentially a merger in reverse.”⁵⁶ Under AERA, an Arizona entity may divide into one or more foreign or domestic entities of any type (e.g., corporation, LLC, etc.) in such a way that the dividing entity will continue to exist, as will one or more new entities.⁵⁷ Conversely, an Arizona entity may also divide into two or more new foreign or domestic entities in such a manner that the dividing entity ceases to exist—again, regardless of the resulting entities.⁵⁸

AERA also sets forth the rules for the allocation of obligations in divisions.⁵⁹ Although a dividing entity may allocate assets in any way it chooses,⁶⁰ AERA stipulates that all entities created by way of a division are jointly and severally liable for the obligations of the dividing entity.⁶¹ This rule is subject to two exceptions: (1) if a creditor consents to the allocation of various obligation to one or more of the resulting entities, and the plan of division explicitly states such, then the other resulting entities are no longer jointly and severally liable for the debt; or (2) if a court or other tribunal rules that a particular debt is to remain the obligation of a particular creditor, then the other resulting entities are no longer jointly and severally liable as to that particular debt.⁶² AERA further provides that resulting entities may mitigate the risk of joint and several liability by allowing them to enter into indemnity agreements among themselves.⁶³

52. *See id.*

53. *Id.*

54. Patterson, Thompson & Wicks, *supra* note 45.

55. Gangadean, *supra* note 14.

56. *Id.*

57. Thompson et al., *supra* note 13, § 14:60. Under AERA’s division statute, for example, “an Arizona corporation could divide in such way that the Arizona corporation continues to exist and also in the process creates (a) another Arizona corporation, (b) an Arizona limited liability company, (c) an Ohio partnership, (d) a Canadian nonprofit corporation, or (e) any other type of Arizona or foreign entity.” *Id.*

58. Thompson et al., *supra* note 13, § 14:60.

59. ARIZ. REV. STAT. ANN. §§ 29-2602, 3603, 2605, 2607 (2015).

60. *Id.* § 29-2607(A)(4)(b).

61. *Id.* § 29-2607(A). This provision was included in order to satisfy the interests of creditors. *Id.*

62. *Id.* § 29-2607(B)(1)–(2).

63. *Id.* § 29-2607(C).

D. Procedural Requirements

One of the primary goals of AERA was to standardize and simplify the procedural requirements for entity-level transactions across all entity types—this differs from Arizona’s former entity-level transaction statutes, which often imposed different procedural requirements for different entities.⁶⁴ In pursuit of this goal, AERA requires the same simple procedure of all entity types that wish to complete a merger, interest exchange, conversion, domestication, or division.⁶⁵ Specifically, any entity that wishes to complete one of these transactions must approve a plan of interest in accordance with their governing statutes and organization documents, and file a statement with the appropriate filing authority that specifies the particular transaction in which the entity wishes to engage, if any.⁶⁶ Each of these transactions becomes effective on the date and time of delivery of the statement, unless the resulting entity (or entities, in the case of a division) is not a domestic filing entity.⁶⁷ If the resulting entity is not a domestic filing entity, then the transaction is complete after the entity signs the statement specifying the transaction in which it wishes to engage.⁶⁸

II. WILL AERA ENCOURAGE INCORPORATION IN ARIZONA?

Because AERA’s drafters were sufficiently able to organize, authorize, and standardize Arizona’s entity-transaction statutes, they have probably reduced some of the red tape that may have prohibited or discouraged entities from conducting business in Arizona in the past. Nevertheless, it is not a foregone conclusion that AERA will immediately encourage a flood of entities to organize in Arizona. At least two factors could impede the process. First, in order for AERA to reduce transaction costs, attorneys and business people must take the time to learn how AERA operates.⁶⁹ When a group of attorneys has practiced a system for a long period of time, some refuse to adjust.⁷⁰ Further, even for those attorneys and business persons who want to learn, adjustment takes time.

Second, AERA cannot operate at its full potential unless other states around the country adopt entity-transaction laws that permit entities to engage in similar transactions.⁷¹ Currently, six states and the District of Columbia have

64. Gangadean, *supra* note 16.

65. *Id.*

66. ARIZ. REV. STAT. ANN. §§ 29-2402, 2403, 2405, 2502, 2503, 2505, 2602, 2603, 2605 (2015).

67. *Id.* §§ 29-2405, 2505, 2605.

68. *Id.*

69. Interview with May Lu, Mergers & Conversions Comm., in Phx., Ariz. (Jan. 7, 2015) [hereinafter Lu, Interview] (explaining that one of the questions she has about the statute is whether attorneys will bother to learn it).

70. See William J. Carney, George B. Shepherd, & Joanna Shepherd Bailey, *Lawyers, Ignorance, and the Dominance of Delaware Corporate Law*, 2 HARV. BUS. L. REV. 123 (2012) (explaining that part of the reason Delaware continues to dominate the market for incorporations is because lawyers do not take the time to learn the laws in other states.).

71. Lu, Interview, *supra* note 69 (explaining that one of the questions she has about the statute is whether attorneys will bother to learn it).

adopted statutes based on the Model Act.⁷² Although the Model Act has not yet been widely adopted, it is slowly gaining steam among the states.⁷³ Yet because the Model Act simplifies the transaction process and allows businesses to react quickly to changes in the economy, some states may believe that the Model Act gives businesses too much freedom, providing a way for businesses quickly to leave one state for another.⁷⁴ States with a robust incorporation market may not be inclined to make it easier for businesses to leave the state.⁷⁵ Nevertheless, it is difficult for existing business owners and entrepreneurs to predict how a business will grow into the future, and the most favorable methods of organization under the law will vary depending on the development of the business. Because AERA and statutes like it provide business owners with the freedom to reorganize quickly and efficiently as business continues to develop, it is likely that existing business owners and entrepreneurs will attempt to remain in states with laws like AERA whenever possible. Therefore, in order to remain competitive in the market for new and existing businesses, states may not have a choice but to adopt laws based on the Model Act.

III. IS AERA THE FIRST STEP TOWARD A MORE BUSINESS-FRIENDLY STATE?

AERA was not intended to make waves across the business community in Arizona. Though AERA does make some substantive changes to Arizona's entity-level transactions statutes, it primarily simplifies and updates some of the laws that already existed. As progressive as it is, AERA is also poised to be just the first step in a series of reforms aiming to make Arizona a more business-friendly state. When the State Bar of Arizona selected the Mergers and Conversions Committee that eventually wrote AERA, it also established an LLC Subcommittee and tasked it with revising and rewriting Arizona's LLC statute. An overhaul to the LLC statute would be major development in the Arizona business community.⁷⁶ And an even bigger change may be on the horizon: the Arizona Supreme Court recently created a Business Court Advisory Committee to determine what a court focused

72. *Model Entity Transactions Act*, UNIF. LAW COMM'N, [http://www.uniformlawcommission.com/Act.aspx?title=Entity%20Transactions%20Act,%20Model%20\(2007\)%20\(Last%20Amended%202013\)](http://www.uniformlawcommission.com/Act.aspx?title=Entity%20Transactions%20Act,%20Model%20(2007)%20(Last%20Amended%202013)) (last visited Jan. 20, 2015). These states include, Alaska, Idaho, Arizona, Kansas, Pennsylvania, and Connecticut. *Id.* Pennsylvania is the most recent state to overhaul its law in favor the Model Act. *Id.*

73. Idaho is the latest to introduce a bill based on the Model Act to its state legislature. *Id.*

74. Lu, Interview, *supra* note 69 (explaining that certain states may believe that the adoption of something similar to the Model Act will only allow businesses to leave).

75. *Id.*

76. Since 1975 when LLCs were adopted as an acceptable entity structure in the United States, they have gained wide popularity in the world of business organizations law. Rodney D. Chrisman, *LLCs are the New King of the Hill: An Empirical Study of the Number of New LLCs, Corporations, and LPs Formed in the United States Between 2004–2007 and How LLCs were Taxed for Tax Years 2002–2006*, 15 *FORDHAM J. CORP. & FIN. L.* 459, 459–60 (2010) (stating that the LLC is “the most popular form of new business entity in the United States”).

solely on business disputes could look like in Arizona.⁷⁷ Because businesses like certainty, they would be attracted to states with courts that specialize in business matters. Additionally, a business court would provide Arizona with a more substantial body of case law, which would give businesses more guidance for the future. AERA may be just the start of a push from Arizona lawmakers to transform Arizona into a more business-friendly state.

CONCLUSION

AERA is a good first step, if modest. It eliminates some of the reasons that business entities may have organized in states other than Arizona by reducing transaction costs, and by providing business entities with greater freedom and flexibility to choose how and where to structure an entity. With that said, the combination of AERA, a brand new LLC statute that similarly simplifies and enhances LLC law, and a forum focused solely on business disputes, would give existing business owners and entrepreneurs even more reason to organize new and existing businesses in the state of Arizona. Accordingly, AERA and the forthcoming changes to Arizona's business environment should serve to increase the number of business entities organized in the state.

77. Nick Blumberg, *Arizona Debates Special Courts for Business Cases*, KJZZ (May 15, 2014), <http://kjzz.org/content/29728/arizona-debates-special-courts-business-cases>.