

HOUSE BILL NO. 463

INTRODUCED BY S. FITZPATRICK

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING A LIMITED LIABILITY COMPANY TO CONVERT TO A CORPORATION OR A LIMITED LIABILITY PARTNERSHIP; PROVIDING REQUIREMENTS FOR A CONVERSION; REQUIRING ALL MEMBERS TO AGREE TO THE CONVERSION; PROVIDING REQUIREMENTS FOR DOCUMENTS THAT MUST BE SUBMITTED IN WRITING; PROVIDING FOR THE EFFECTIVE DATE OF A THE LIMITED LIABILITY COMPANY CONVERSION; PROVIDING DEFINITIONS; AND AMENDING SECTION 35-8-1205 ~~35-8-307~~, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

(Refer to Introduced Bill)

Strike everything after the enacting clause and insert:

NEW SECTION. Section 1. Conversion of limited liability company to domestic corporation or limited liability partnership. (1) A limited liability company may be converted to a domestic corporation or a limited liability partnership pursuant to this section.

(2) The plan of a conversion of a limited liability company to a domestic corporation or a limited liability partnership must be approved by all of the members or by a number or percentage of members required for conversion in the operating agreement. If as a result of the conversion one or more interest holders of the converting limited liability company would become subject to interest holder liability, approval of the plan of conversion must require the signing in connection with the transaction, by each affected interest holder, of a separate written consent to become subject to the interest holder liability.

(3) An plan of conversion must be in writing and must:

(a) set forth the terms and conditions of the conversion of the interests of members and transferees of a limited liability company into interests in the converted domestic corporation or limited liability partnership, into cash or other consideration to be paid or delivered as a result of the conversion of the interests

of the members, or into a combination of interests, cash, or other consideration; and

(b) contain the name of the converting limited liability company, the name, jurisdiction of formation, and type of entity of the converted domestic corporation or limited liability partnership, the full text that will be in effect immediately after the conversion becomes effective of the articles of incorporation and bylaws of the converted domestic corporation or the partnership agreement and the application for registration of the limited liability partnership, which must be in writing, and other terms and conditions of the conversion.

(4) In addition to the requirements of subsection (3), a plan of conversion may contain any other provision not prohibited by law. The terms of a plan of conversion may be made dependent on facts objectively ascertainable outside the plan in accordance with 35-14-120(11).

(5) After a conversion is approved under subsection (2), the limited liability company shall file articles of conversion and all filing fees in the office of the secretary of state that satisfy the requirements of Title 35 and that contain:

(a) the name of the converting limited liability company;

(b) the name and type of entity of the converted domestic corporation or limited liability partnership;

(c) a statement that the plan of conversion was approved by the members in accordance with subsection (2);

(d) if the converted entity is:

(i) a domestic corporation, the articles of incorporation of the corporation, as an attachment, except that provisions would not be required to be included in a restated articles of incorporation may be omitted; or

(ii) a domestic limited liability partnership, the application for registration of the limited liability partnership, as an attachment; and

(f) if the articles of conversion are not to be effective upon filing, the later date and time on which the articles of conversion will become effective, which may not be more than 90 days after the date of filing.

(6) If the converted entity is a domestic corporation, its articles of incorporation must satisfy the requirements of 35-14-202, except that provisions that would not be required to be included in restated articles of incorporation may be omitted from the articles of incorporation. If the converted entity is a domestic limited

liability partnership, its application for registration must satisfy the requirements of 35-10-701, except that the articles of incorporation or application for registration, as applicable, do not need to be signed.

(7) In addition to the requirements of subsection (5), the articles of conversion may contain any other provision not prohibited by law.

(8) A conversion takes effect when the articles of conversion are filed in the office of the secretary of state or at a later date and time specified in the articles of conversion, which may not be more than 90 days after the date of filing.

(9) This section only allows a domestic limited liability company to convert to a domestic corporation or a limited liability partnership.

NEW SECTION. Section 2. Effect of conversion of limited liability company to domestic corporation or limited liability partnership. (1) When a conversion becomes effective:

(a) all property owned by and every contract right possessed by the converting limited liability company remain the property and contract rights of the converted domestic corporation or limited liability partnership without transfer, reversion, or impairment;

(b) all debts, obligations, and other liabilities of the converting limited liability company remain the debts, obligations, and other liabilities of the converted domestic corporation or limited liability partnership;

(c) the name of the converted domestic corporation or limited liability partnership may be but need not be substituted for the name of the converting limited liability company in any pending action or proceeding;

(d) if the converted entity is a domestic corporation, its articles of incorporation and bylaws become effective;

(e) if the converted entity is a domestic limited liability partnership, the application of registration of the limited liability partnership and its partnership agreement become effective;

(f) the interests of the converting limited liability company are reclassified into shares, interests or other securities, obligations, rights to acquire shares, eligible interests or other securities, cash, or other property in accordance with the terms of the plan of conversion, and the members and transferees of interests of the converting limited liability company are entitled only to the rights provided to them by those terms and to any contractual appraisal rights they may have under the articles of organization or the operating agreement of

1 the converting limited liability company; and

2 (g) the converted domestic corporation or limited liability partnership is:

3 (i) incorporated or created under and subject to the provisions of provisions of Title 35, chapter
4 14, in the case of a converted domestic corporation and the provisions of Title 35, chapter 10, applicable to a
5 limited liability partnership in the case of a converted domestic limited liability partnership;

6 (ii) the same entity without interruption as the converting limited liability company; and

7 (iii) considered to have been incorporated or created on the date that the converting limited liability
8 company was originally organized.

9 (2) Except as otherwise provided in the articles of incorporation of a domestic corporation or the
10 organic law or organic rules of a domestic limited liability partnership, an interest holder of the converting limited
11 liability company who becomes subject to interest holder liability with respect to a domestic corporation or
12 limited liability partnership as a result of the conversion has the interest holder liability only with respect to
13 interest holder liabilities that arise after the conversion becomes effective.

14 (3) Except as otherwise provided in the organic law or the organic rules of the converting limited
15 liability company, the interest holder liability of an interest holder in a converting limited liability company that
16 converts to a domestic corporation or a limited liability partnership who had interest holder liability with respect
17 to that converting limited liability company before the conversion becomes effective is as follows:

18 (a) The conversion does not discharge that prior interest holder liability with respect to any interest
19 holder liabilities that arose before the conversion became effective.

20 (b) The provisions of the organic law of the converting limited liability company continue to apply to
21 the collection or discharge of any interest holder liabilities preserved by subsection (3)(a) as if the conversion
22 had not occurred.

23 (c) The interest holder has the rights of contribution from other persons that are provided by the
24 organic law or the organic rules of the converting limited liability company with respect to any interest holder
25 liabilities preserved by subsection (3)(a) as if the conversion had not occurred.

26 (d) The interest holder does not, by reason of the prior interest holder liability, have interest holder
27 liability with respect to any interest holder liabilities that arise after the conversion becomes effective.

28 (5) A conversion does not require the converting limited liability company to wind up its affairs and

does not constitute or cause the dissolution or termination of the converting limited liability company.

Section 3. Section 35-8-1205, MCA, is amended to read:

"35-8-1205. Definitions. As used in this part, the following definitions apply:

(1) "Application for registration of limited liability partnership" means the application for registration described in 35-10-701.

(2) "Articles of incorporation" has the same meaning as provided in 35-14-140.

(3) "Conversion" means a transaction authorized by [Section 1] or 35-8-1210.

(4) "Converted entity" means the converting entity as it continues in existence after the conversion and includes a converted domestic corporation, converted limited liability partnership, and converted limited liability company, as applicable, that continues in existence after the conversion.

(5) "Converting entity" means the domestic partnership or limited partnership that approves an agreement of conversion pursuant to 35-8-1210 or the converting limited liability company, as applicable.

(6) "Converting limited liability company" means a domestic limited liability company that approves a plan of conversion to a domestic corporation or a domestic limited liability partnership pursuant to [section 1].

~~(4)~~(7) "Corporation" means a corporation formed under the laws of this state or comparable law of another jurisdiction.

(8) "Domestic" means, with respect to an entity, governed as to the entity's internal affairs by the laws of this state.

~~(2)~~(9) "General partner" means a partner in a partnership and a general partner in a limited partnership.

(10) "Interest holder" has the same meaning as provided in 35-14-140.

(11) "Interest holder liability" has the same meaning as provided in 35-14-140.

(12) "Limited liability partnership" means a partnership registered as a limited liability partnership under the laws of this state or comparable law of another jurisdiction.

~~(3)~~(13) "Limited partner" means a limited partner in a limited partnership.

~~(4)~~(14) "Limited partnership" means a limited partnership formed under the laws of this state or comparable law of another jurisdiction.

(15) "Organic law" has the same meaning as provided in 35-14-140.

(16) "Organic rules" has the same meaning as provided in 35-14-140.

~~(5)(17)~~ "Partner" means a general partner or a limited partner.

~~(6)(18)~~ "Partnership" means a general partnership formed under the laws of this state or comparable law of another jurisdiction.

~~(7)(19)~~ "Partnership agreement" means an agreement among the partners of a partnership, ~~or a~~ limited partnership, or a limited liability partnership."

NEW SECTION. Section 4. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 35, chapter 8, and the provisions of Title 35, chapter 8, apply to [sections 1 and 2].

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