~~Indicates Matter Stricken~~

Indicates New Matter

RECALLED

April 22, 2010

**H. 4695**

Introduced by Reps. Anderson, Miller, Crawford, Brantley, Allen, G.A. Brown, Dillard, Hayes, Hodges, Hosey, Jefferson, Littlejohn, Lowe and J.H. Neal

S. Printed 4/22/10--H.

Read the first time March 4, 2010.

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 33‑31‑1040 SO AS TO PROVIDE FOR THE MANNER IN WHICH A NONPROFIT CORPORATION MAY CONVERT TO A FOR PROFIT CORPORATION; BY ADDING SECTION 33‑31‑1045 SO AS TO PROVIDE FURTHER CONDITIONS FOR THE CONVERSION OF A PUBLIC BENEFIT OR RELIGIOUS CORPORATION TO A FOR PROFIT CORPORATION; AND TO AMEND SECTION 33‑1‑200, AS AMENDED, RELATING TO FILING REQUIREMENTS UNDER THE BUSINESS CORPORATION ACT, SO AS TO ADD A REFERENCE TO THE CHAPTER ON NONPROFIT CORPORATIONS.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Article 10, Chapter 31, Title 33 of the 1976 Code is amended by adding:

“Section 33‑31‑1040. (A) Subject to the limitations of Section 33‑31‑1045, a corporation formed under this chapter may, by amendment of its articles pursuant to this section, convert to a for profit corporation as described in Section 33‑1‑400(a), which is subject to Chapters 1 through 20 of this title. Upon conversion, the corporation is considered to have previously filed articles of incorporation under Section 33‑2‑102 upon the date of its incorporation under this chapter and to have filed articles of amendment pursuant to Section 33‑31‑1005.

(B) The amendment of the articles to convert to a for profit corporation shall:

(1) eliminate the statement of purpose for which the corporation is organized and state that the corporation is to be organized under Chapters 1 through 20, Title 33 of the 1976 Code;

(2) if the corporation is to be a statutory close corporation described in Section 33‑18‑101, et seq., contain the statement required by Section 33‑18‑103(a) that the corporation is a statutory close corporation;

(3) if the corporation is to be a professional corporation described in Section 33‑19‑101, et seq., contain the statement required by Section 33‑19‑109(a) that the corporation is a professional corporation and its purpose is to render the specified professional services;

(4) set forth the address, including zip code, of the proposed registered office for the corporation which must be within this State and provide the name of the initial registered agent at that address;

(5) state whether the corporation is authorized to issue one or more classes of shares and state the authorized number of shares for each class;

(6) if the corporation is to have multiple classes of shares, state the relative right, preference, and limitations of the shares of each class, and of each series within a class;

(7) if the corporation elects to include optional provisions pursuant to Section 33‑2‑102(b), 35‑2‑105 and 35‑2‑221, include such provisions;

(8) contain a certification by an attorney licensed to practice in the state of South Carolina, certifying that the corporation has complied with the requirements of Chapter 2, Title 33 of the 1976 Code relating to the articles of incorporation;

(9) make other changes as necessary or desired pursuant to Section 33‑2‑102; and

(10) if any memberships have been issued, provide either for the cancellation of those memberships or for the conversion of those memberships to shares of the for profit corporation.

(C) If memberships have been issued, an amendment to convert to a for profit corporation must be approved by all of the outstanding memberships of all classes regardless of limitations or restrictions on the voting rights of the memberships.

(D) Upon conversion, the corporation’s bylaws must be amended to comply with Section 33‑2‑106 and the provisions of Chapters 1 through 20 of this title, as applicable.”

SECTION 2. Article 10, Chapter 31, Title 33 of the 1976 Code is amended by adding:

“Section 33‑31‑1045. (A) Without the prior approval of the court of common pleas of Richland County in a proceeding in which the Attorney General has been given written notice, a public benefit or religious corporation may convert to a for profit corporation under this section only if:

(1) on or before the effective date of the conversion, assets with a value equal to the greater of the fair market value of the net tangible and intangible assets, including goodwill, of the public benefit corporation or religious corporation or the fair market value of the public benefit corporation or religious corporation if it were to be operated as a business concern are transferred or conveyed to one or more persons who would have received its assets under Section 33‑31‑1406(a)(5) and (6) had it dissolved;

(2) it shall return, transfer, or convey any assets held by it upon condition requiring return, transfer, or conveyance, which condition occurs by reason of the conversion, in accordance with such condition; and

(3) the conversion is approved by a majority of directors of the public benefit or religious corporation who are not and will not become shareholders in or officers, employees, agents, or consultants of the converted corporation.

(B) At least twenty days before consummation of a conversion of a public benefit corporation or a religious corporation pursuant to subsection (A), notice, including a copy of the proposed plan of conversion, addressing all of the issues described in Section 33‑31‑1040 and this section, must be delivered to the Attorney General.

(C) Where approval or consent is required by this section, it must be given if the transaction is consistent with the purposes of the public benefit or religious corporation or is otherwise in the public interest.”

SECTION 3. Section 33‑1‑200(b) of the 1976 Code is amended to read:

“(b) Chapters 1 through 20 and Chapter 31 of this Title must require or permit filing the document in the Office of the Secretary of State.”

SECTION 4. This act takes effect upon approval by the Governor.

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