COMMITTEE REPORT

March 25, 2021

**S. 232**

Introduced by Senator Turner

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Read the first time January 12, 2021.

**THE COMMITTEE ON LABOR, COMMERCE AND INDUSTRY**

To whom was referred a Bill (S. 232) to amend Article 11, Chapter 31, Title 33 of the 1976 Code, relating to mergers under the South Carolina Nonprofit Corporation Act, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass:

THOMAS C. ALEXANDER for Committee.

**A** **BILL**

TO AMEND ARTICLE 11, CHAPTER 31, TITLE 33 OF THE 1976 CODE, RELATING TO MERGERS UNDER THE SOUTH CAROLINA NONPROFIT CORPORATION ACT, BY ADDING SUBARTICLE B, TO PROVIDE FOR THE CONVERSION OF A NONPROFIT CORPORATION TO A LIMITED LIABILITY COMPANY, REQUIREMENTS FOR A PLAN OF CONVERSION, AND THE EFFECT OF CONVERSION; AND TO AMEND SECTION 33‑31‑1101 OF THE 1976 CODE, RELATING TO THE APPROVAL OF A PLAN OF MERGER UNDER THE SOUTH CAROLINA NONPROFIT CORPORATION ACT, SECTION 33‑31‑1102 OF THE 1976 CODE, RELATING TO LIMITATIONS ON MERGERS BY PUBLIC BENEFIT OR RELIGIOUS CORPORATIONS, AND SECTION 33‑11‑101 OF THE 1976 CODE, RELATING TO MERGERS FOR CORPORATIONS, PARTNERSHIPS, AND ASSOCIATIONS, TO MAKE CONFORMING CHANGES.

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

SECTION 1. Article 11, Chapter 31, Title 33 of the 1976 Code is amended by adding:

“SUBARTICLE B

Conversion of a Nonprofit Corporation to a Limited Liability Company

Section 33-31-1150. (A) A corporation may be converted to a limited liability company pursuant to this subarticle. For a corporation to convert to a limited liability company, the corporation’s board of directors shall adopt a plan of conversion.

(B) A plan of conversion must include:

(1) the name of the corporation converting and the name of the resulting limited liability company;

(2) the terms and conditions of the planned conversion; and

(3) the manner and basis, if any, of converting the memberships of the corporation to the resulting limited liability company.

(C)(1) After adopting a plan of conversion, the board of directors shall submit the plan of conversion for approval by its members, if any. For a plan of conversion to be approved, the corporation shall notify each member, if any, of a proposed membership meeting in accordance with Section 33-31-705 to consider a plan of conversion. The notice must also contain or be accompanied by a copy or summary of the plan of conversion.

(2) Unless this chapter, Chapters 1 through 20 of this title, the articles of incorporation, or the bylaws require a different vote or voting by class, the plan of conversion must be approved:

(a) by the board of directors;

(b) by two‑thirds of the votes cast or a majority of the voting power, whichever is less, of the corporation’s members, if any; and

(c) in writing by any person whose approval is required by a provision of the corporation’s articles of incorporation authorized by Section 33‑31‑1030 or an amendment to the articles of incorporation or bylaws.

(3) While the articles of incorporation may require a lower or higher vote for approval than that specified in item (2), the required vote must be by at least a majority of the votes entitled to be cast on the plan by each voting group entitled to vote separately on the plan.

(4) If the corporation does not have members or does not have members entitled to vote on the plan of conversion, then the plan of conversion must be approved by a majority of the board of directors who are in office at the time that the plan of conversion is approved. In addition, the corporation shall provide notice of any meeting of the board of directors at which such approval is to be obtained in accordance with Section 33‑31‑822(c). The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the proposed plan of conversion.

(5) Approval by a class of members is required on a plan of conversion if the plan contains a provision that, if contained in a proposed amendment to the articles of incorporation or bylaws, would entitle the class of members to vote as a class on the proposed amendment under Section 33-31-1004 or Section 33-31-1022. The plan must be approved by two-thirds of the votes cast by a class of members or a majority of the voting power of the class, whichever is less.

(D) At least twenty days before the consummation of a conversion of a public benefit corporation or a religious corporation pursuant to this subarticle, notice must be delivered to the Attorney General. The notice must include a copy of the plan of conversion. No member of a public benefit or religious corporation may receive or keep anything as a result of a conversion other than a membership in the resulting limited liability company.

(E) If a plan of conversion is approved pursuant to subsection (C), then the converting corporation shall file articles of organization that satisfy the requirements of Section 33‑44‑203 with the Secretary of State. The articles of organization must contain:

(1) a statement that the corporation governed by this chapter is converted to a limited liability company;

(2) the corporation’s former name;

(3) if the approval of members is not required, a statement to that effect and a statement that the plan of conversion was approved by a sufficient vote of the board of directors of the corporation;

(4) if the approval of members is required:

(a) the designation, number of memberships outstanding, number of votes entitled to be cast by each class entitled to vote separately on the plan, and number of votes of each class indisputably voting on the plan; and

(b) either the total number of votes cast for and against the plan by each class entitled to vote separately on the plan, or the total number of undisputed votes cast for the plan by each class and a statement that the number of votes cast for the plan by each class was sufficient for approval by that class; and if the vote is less than unanimous, the number or percentage of votes required to approve the conversion;

(5) if approval of the plan is required by some other person or persons pursuant to subsection (C)(2)(c), a statement that the person or persons’ approval was obtained; and

(6) a statement that the articles of incorporation are cancelled as of the date that the conversion takes effect.

(F) The filing of articles of organization pursuant to subsection (E) cancels the articles of incorporation of the corporation as of the date the conversion takes effect.

(G) A conversion takes effect when the articles of organization are filed with the Office of the Secretary of State or at a later date specified in the articles of organization.

(H) After a plan of conversion is approved pursuant to subsection (C), and at any time before articles of organization are filed pursuant to subsection (E), a planned conversion may be abandoned, subject to any contractual rights, without further action by members or other persons who approved the plan in accordance with the procedure set forth in the plan of conversion or, if no procedure is set forth, in the manner determined by the board of directors.

Section 33-31-1160. (A) If a conversion takes effect, then:

(1) the title to all real estate and other property owned by the converting corporation is vested in the resulting limited liability company without reversion or impairment, subject to the conditions to which the property was subject before the conversion;

(2) the resulting limited liability company has all liabilities and obligations of the converting corporation;

(3) an action or proceeding pending by or against the converting corporation may be continued as if the conversion had not occurred;

(4) except as prohibited by any other law, all the rights, privileges, immunities, and powers of the converting corporation vest in the limited liability company; and

(5) except as otherwise provided in the approved plan of conversion, all members of the converting corporation shall continue as members of the limited liability company.

(B)(1) If a corporation that owns real property in this State is converted to a limited liability company, then the newly named limited liability company must file a notice of that name change in the office of the register of deeds of the county in which the real property is located. If there is no office of the register of deeds in that county, then a notice of name change must be filed with the clerk of court of the county in which the real property is located.

(2) The filing must include:

(a) an affidavit containing the former name of the corporation, the new name of the limited liability company, and a description of the real property owned by the limited liability company;

(b) a certified copy of the articles of organization, including a description of the real property; or

(c) a duly recorded deed of conveyance to the newly named limited liability company.

(3) The affidavit, filed articles of organization, or deed must be duly indexed in both the grantor and grantee indices to deeds in the index of deeds.

(4) The purpose of this item is to establish record notice pursuant to Chapter 7, Title 30. Failure of a converting corporation to make the required filing for a name change does not affect the legality, force, effect, or enforceability between the parties of any conveyance or other transaction involving the real estate owned by the affected limited liability company that is made after the change in name.”

SECTION 2. Section 33-31-1101 of the 1976 Code is amended by adding a new subsection to read:

“(d) A corporation formed under and governed by this chapter may convert to a limited liability company in accordance with Subarticle B, Article 11, Chapter 31, Title 33.”

SECTION 3. Section 33-31-1102 of the 1976 Code is amended by adding a new subsection to read:

“(e) Nothing in this section is intended to limit the conversion of a corporation to a limited liability company, pursuant to Subarticle B, Article 11, Chapter 31, Title 33.”

SECTION 4. Section 33-11-101 of the 1976 Code is amended by adding a new subsection to read:

“(d) A corporation, as defined by Section 33-31-140, may convert to a limited liability company in accordance with Subarticle B, Article 11, Chapter 31, Title 33.”

SECTION 5. This act takes effect upon approval by the Governor.

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