

State of South Dakota

NINETY-FIRST SESSION
LEGISLATIVE ASSEMBLY, 2016

238X0010

HOUSE JUDICIARY ENGROSSED NO. **HB 1068** -
02/22/2016

This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.

Introduced by: Representatives Stevens, Johns, and Schoenbeck and Senator Rusch

1 FOR AN ACT ENTITLED, An Act to revise provisions related to the conversion of nonprofit
2 corporations.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 47-22-4 be amended to read:

5 47-22-4. Corporations may be organized under this chapter for any lawful purpose,
6 including, but not limited to, any one or more of the following purposes:

- 7 (1) Agricultural;
- 8 (2) Animal husbandry;
- 9 (3) Athletic;
- 10 (4) Benevolent;
- 11 (5) Charitable;
- 12 (6) Civic;
- 13 (7) Cultural;
- 14 (8) Educational;



1 (9) Eleemosynary;

2 (10) Fraternal;

3 (11) Horticultural;

4 (12) Literary;

5 (13) Patriotic;

6 (14) Political;

7 (15) Religious;

8 (16) Scientific;

9 (17) Social; and

10 (18) Professional, commercial, industrial, or trade association. However, labor unions,
11 cooperative organizations, other than housing cooperatives, communals, and
12 organizations subject to any of the provisions of the banking laws of this state may
13 not be organized under this chapter. Notwithstanding any other provision of this title,
14 any insurance organization formed under this chapter is subject to Title 58.

15 Section 2. That § 47-22-5 be amended to read:

16 47-22-5. ~~Three~~ One or more natural persons of the age of majority may act as incorporators
17 of a corporation by delivering to the secretary of state the articles of incorporation for such
18 corporation. Delivery may be made by electronic transmission if and to the extent permitted by
19 the Office of the Secretary of State. If the document is filed in typewritten or printed form and
20 not transmitted electronically, the Office of the Secretary of State may require one exact or
21 conformed copy to be delivered with the document.

22 Section 3. That chapter 47-22 be amended by adding a NEW SECTION to read:

23 Notwithstanding any provision to the contrary in chapters 47-22 to 47-28, inclusive, filings
24 with the Office of Secretary of State may be made by electronic transmission if and to the extent

1 permitted by the Office of Secretary of State.

2 Section 4. That chapter 47-22 be amended by adding a NEW SECTION to read:

3 Notwithstanding any provision to the contrary in chapters 47-22 to 47-28, inclusive, filings
4 with the Office of Secretary of State may specify delayed effective time and date, and if it does
5 so the document becomes effective at the time and date specified. If a delayed effective date is
6 indicated, but no time is specified, the document is effective at the close of business on that
7 date. A delayed effective date for a document may not be later than the ninetieth day after the
8 date it is filed.

9 Section 5. That § 47-23-2.1 be amended to read:

10 47-23-2.1. No director, trustee, committee member, or officer serving without compensation,
11 other than reimbursement for actual expenses, of any corporation organized under this chapter
12 or under similar laws of another state, ~~and which is exempt from taxation pursuant to Section~~
13 ~~501(a) of the Internal Revenue Code, 26 U.S.C. Section 501(a) and is listed as an exempt~~
14 ~~organization in Section 501(c) of the Internal Revenue Code, 26 U.S.C. Section 501(c), or any~~
15 hospital organized pursuant to chapter 34-8, 34-9, or 34-10 is liable, and no cause of action may
16 be brought, for damages resulting from the exercise of judgment or discretion in connection
17 with the duties or responsibilities of such director, trustee, committee member, or officer while
18 acting in an official capacity as such director, trustee, committee member, or officer, unless the
19 act or omission involved willful or wanton misconduct. The immunity provided by this section
20 applies to any member of an advisory board, serving without compensation, other than
21 reimbursement for actual expenses, of any corporation described by this section.

22 Section 6. That § 47-23-4 be amended to read:

23 47-23-4. An annual meeting of the members of a corporation shall be held at such time as
24 may be provided in the bylaws. Failure to hold the annual meeting at the designated time shall

1 not work a forfeiture or dissolution of the corporation. The articles of incorporation or bylaws
2 may provide that an annual or regular meeting of members does not need to be held at a
3 geographic location and may instead be held by any means of electronic communication which
4 allows the members to read or hear the proceedings substantially concurrently with their
5 occurrence, vote on matters submitted to the members, pose questions, and make comments.

6 Section 7. That § 47-23-6 be amended to read:

7 47-23-6. Any action required by chapters 47-22 to 47-28, inclusive, to be taken at a meeting
8 of the members or directors of a corporation, or any action which may be taken at a meeting of
9 the members or directors or of a committee of directors, may be taken without a meeting if a
10 consent in writing, setting forth the action so taken, shall be signed by all the members entitled
11 to vote with respect to the subject matter thereof, or all of the directors, or all of the members
12 of the committee of directors, as the case may be. If permitted in the articles of incorporation
13 or the bylaws, such consent and signature may be transmitted by any reasonable means
14 including, but not limited to, traditional mail, hand delivery, email, or electronic facsimile.

15 Such consent shall have the same force and effect as a unanimous vote, and may be stated
16 as such in any articles or document filed with the secretary of state under chapters 47-22 to 47-
17 28, inclusive.

18 Section 8. That § 47-23-7 be amended to read:

19 47-23-7. Unless otherwise provided in the articles of incorporation or the bylaws, written
20 notice stating the place, day, and hour of the meeting and, in the case of a special meeting, the
21 purpose or purposes for which the meeting is called, shall be delivered not less than ten nor
22 more than fifty days before the date of the meeting, either personally or by mail, by or at the
23 direction of the president, or the secretary, or the officers or persons calling the meeting, to each
24 member entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered

1 when deposited in the United States mail addressed to the member at his address as it appears
2 on the records of the corporation, with postage thereon prepaid. If permitted in the articles of
3 incorporation or the bylaws, notice of meetings may be given by any reasonable means
4 including, but not limited to, traditional mail, hand delivery, email, or electronic facsimile.

5 Section 9. That § 47-23-9 be amended to read:

6 47-23-9. A member entitled to vote may vote in person or, unless the articles of
7 incorporation or the bylaws otherwise provide, may vote by proxy executed in writing by the
8 member or by his duly authorized attorney in fact. No proxy shall be valid after eleven months
9 from the date of its execution, unless otherwise provided in the proxy. ~~Where directors or~~
10 ~~officers are to be elected by members, the bylaws may provide that such elections may be~~
11 ~~conducted by mail.~~ Except as otherwise provided in the articles of incorporation or bylaws, any
12 action that may be taken at any annual, regular, or special meeting of members may be taken
13 without a meeting if the corporation delivers a ballot to every member entitled to vote on the
14 matter. Each ballot must:

15 (1) Set forth each proposed action;

16 (2) Provide an opportunity to vote for or against, or withhold a vote for, each proposed
17 action;

18 (3) Be delivered to each member by any means of transmission set forth in the bylaws
19 or articles of incorporation. If no method is set forth in the bylaws or articles of
20 incorporation, ballots may be delivered by any reasonable means, including, but not
21 limited to, traditional mail, hand delivery, email, or electronic facsimile;

22 (4) Indicate the number of responses needed to meet the quorum requirements;

23 (5) State the percentage of approvals necessary to approve each matter other than
24 election of directors; and

(6) Specify the time by which a ballot must be received in order to be counted.

Unless otherwise provided in the articles of incorporation or bylaws, approval by ballot, pursuant to this section, of action other than election of directors is valid only when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot. Except as otherwise provided in the articles of incorporation or bylaws, a ballot may not be revoked.

Section 10. That § 47-23-13 be amended to read:

47-23-13. ~~The~~ Except as authorized by § 47-23-22, the affairs of a corporation shall be managed by a board of directors. Directors need not be members of the corporation unless the articles of incorporation or the bylaws so require. The articles of incorporation or the bylaws may prescribe other qualifications for directors.

Section 11. That § 47-23-22 be amended to read:

47-23-22. If the articles of incorporation or the bylaws so provide, the board of directors; ~~by resolution adopted by a majority of the directors in office;~~ may designate one or more committees each of which shall consist of ~~two~~ one or more directors, ~~which~~ and such additional members as specified in the resolution which such additional members need not be a director or member of the nonprofit corporation, or resident of the state. Such committees, to the extent provided ~~in such resolution;~~ in the articles of incorporation or in the bylaws of the corporation, shall have and exercise the authority or function of the board of directors in the management of the corporation; ~~but the.~~ The designation of such committees and the delegation thereto of authority shall not operate to relieve the board of directors, or any individual director of any responsibility imposed upon it or ~~him~~ any individual director by law except those

1 responsibilities related to the authority or function the committee is authorized to exercise.
2 Other committees not having and exercising the authority of the board of directors in the
3 management of the corporation may be designated by a resolution adopted by a majority of the
4 directors present at a meeting at which a quorum is present. Members of committees created
5 under this section have the same rights of indemnification and immunity as are provided to the
6 board of directors in chapters 47-22 to 47-28, inclusive, unless otherwise provided in the articles
7 of incorporation or bylaws.

8 Section 12. That § 47-24-1 be amended to read:

9 47-24-1. Each corporation shall keep correct and complete books and records of account and
10 shall keep minutes of the proceedings of its members, board of directors, and committees having
11 any of the authority of the board of directors; and shall keep at its registered office or principal
12 office a record of the names and addresses of its members entitled to vote. If authorized by the
13 articles of incorporation or bylaws, the records required by this section may be kept in electronic
14 format.

15 Section 13. That § 47-24-17 be amended to read:

16 47-24-17. ~~Upon~~ At least ten days prior to the sale, transfer, conversion, or merger of at least
17 thirty percent of the assets of a nonprofit corporation, the corporation shall give written notice
18 to the attorney general. The following information shall, within sixty days of such sale, transfer,
19 or merger, be submitted to the secretary of state:

- 20 (1) Name and address of the parties involved in the sale, transfer, conversion, or merger;
- 21 (2) Terms and conditions of the sale, transfer, conversion, or merger;
- 22 (3) Dollar value of the assets being sold, transferred, converted, or merged, including an
23 account of how the value was determined; and
- 24 (4) An explanation of how the sale, transfer, conversion, or merger furthers the purpose

1 of the nonprofit corporation.

2 The information shall be submitted on forms provided by the secretary of state.

3 Section 14. That the code be amended by adding a NEW SECTION to read:

4 At least ten days prior to a meeting to dissolve under chapter 47-26, or conversion from a
5 nonprofit corporation to a domestic business corporation or other business entity authorized by
6 law, the corporation shall provide notice to the attorney general which notice shall include a
7 copy of the plan for distribution of assets required pursuant to § 47-26-6 or plan of conversion
8 pursuant to section 23 or 24 of this Act.

9 Section 15. That the code be amended by adding a NEW SECTION to read:

10 If so provided in the articles of incorporation or bylaws of the corporation, any written notice
11 required to be provided to any member or director pursuant to any provision of chapters 47-22
12 to 47-28, inclusive, may be sent by any reasonable means of transmission set forth in the articles
13 of incorporation or bylaws of the corporation, including, but not limited to, traditional mail,
14 hand delivery, email, or electronic facsimile.

15 Section 16. That the code be amended by adding a NEW SECTION to read:

16 Terms used in sections 16 to 37, inclusive, of this Act, mean:

- 17 (1) "Conversion," a transaction authorized by sections 23 to 37, inclusive, of this Act;
- 18 (2) "Converting corporation," the domestic or foreign nonprofit or business corporation
19 that approves a conversion pursuant to sections 23 to 37, inclusive, of this Act, or the
20 applicable laws of the foreign jurisdiction;
- 21 (3) "Converting entity," the domestic or foreign entity that approves a conversion
22 pursuant to sections 23 to 37, inclusive, of this Act;
- 23 (4) "Domesticated corporation," the domesticating corporation as it continues in
24 existence after a domestication;

(5) "Domesticating corporation," the domestic nonprofit corporation that adopts a plan of domestication pursuant to sections 18 to 22, inclusive, of this Act, or the foreign nonprofit corporation that approves a domestication pursuant to the applicable laws of the foreign jurisdiction;

(6) "Domestication," a transaction authorized by sections 18 to 22, inclusive, of this Act;

(7) "Surviving corporation," the corporation as it continues in existence immediately after consummation of a for-profit conversion pursuant to sections 18 to 37, inclusive, of this Act;

(8) "Surviving entity," the unincorporated entity as it continues in existence immediately after consummation of an entity conversion pursuant to sections 18 to 37, inclusive, of this Act.

Section 17. That the code be amended by adding a NEW SECTION to read:

If a domestic or foreign nonprofit corporation may not be a party to a merger or sale of its assets without the approval of the attorney general, the Division of Insurance, or the Public Utilities Commission, the corporation may not be a party to a conversion or domestication without the prior approval of that agency.

Section 18. That the code be amended by adding a NEW SECTION to read:

(a) A foreign nonprofit corporation may become a domestic nonprofit corporation only if the domestication is authorized by the laws of the foreign jurisdiction.

(b) A domestic nonprofit corporation may become a foreign nonprofit corporation if the domestication is permitted by the laws of the foreign jurisdiction. Regardless of whether the laws of the foreign jurisdiction require the adoption of a plan of domestication, the domestication must be approved by the adoption by the corporation of a plan of domestication.

(c) The plan of domestication must include:

1 (1) A statement of the jurisdiction in which the corporation is to be domesticated;

2 (2) The terms and conditions of the domestication;

3 (3) The manner and basis of canceling or reclassifying the memberships of the
4 corporation following its domestication into memberships, obligations, rights to
5 acquire memberships, cash, other property, or any combination of the foregoing; and

6 (4) Any desired amendments to the articles of incorporation or bylaws of the corporation
7 following its domestication.

8 (d) The plan of domestication may also include a provision that the plan may be amended
9 prior to filing the document required by the laws of this state or the other jurisdiction to
10 consummate the domestication; except that, subsequent to approval of the plan by the members,
11 the plan may not be amended without the approval of the members to change:

12 (1) The amount or kind of memberships, obligations, rights to acquire memberships,
13 cash, or other property to be received by the members under the plan;

14 (2) The articles of incorporation to be in effect immediately following the domestication;
15 or

16 (3) Any of the other terms or conditions of the plan if the change would adversely affect
17 any of the members in any material respect.

18 (e) If any debt security, note or similar evidence of indebtedness for money borrowed,
19 whether secured or unsecured, or a contract of any kind, issued, incurred or executed by a
20 domestic nonprofit corporation before the effective date of this Act contains a provision
21 applying to a merger of the corporation and the document does not refer to a domestication of
22 the corporation, the provision shall be deemed to apply to a domestication of the corporation
23 until such time as the provision is amended subsequent to that date.

24 Section 19. That the code be amended by adding a NEW SECTION to read:

1 In the case of a domestication of a domestic nonprofit corporation in a foreign jurisdiction:

2 (1) The plan of domestication must be adopted by the board of directors;

3 (2) After adopting the plan of domestication the board of directors must submit the plan
4 to the members for their approval, if there are members entitled to vote on the plan.

5 The board of directors must also transmit to the members a recommendation that the
6 members approve the plan, unless the board of directors makes a determination that
7 because of conflicts of interest or other special circumstances it should not make such
8 a recommendation, in which case the board of directors must transmit to the members
9 the basis for that determination;

10 (3) The board of directors may condition its submission of the plan of domestication to
11 the members on any basis;

12 (4) If the approval of the members is to be given at a meeting, the corporation must
13 notify each member, whether or not entitled to vote, of the meeting of members at
14 which the plan of domestication is to be submitted for approval. The notice must
15 state that the purpose, or one of the purposes, of the meeting is to consider the plan
16 and must contain or be accompanied by a copy or summary of the plan. The notice
17 must include or be accompanied by a copy of the proposed articles of incorporation
18 and bylaws to be in effect immediately after the domestication;

19 (5) Unless the articles of incorporation or bylaws, or the board of directors acting
20 pursuant to subdivision (3) of this section, requires a greater vote or a greater number
21 of votes to be present, the approval of the plan of domestication by the members
22 requires the approval of the members at a meeting at which a quorum exists, and, if
23 any class of members is entitled to vote as a separate group on the plan, the approval
24 of each such separate class at a meeting at which a quorum of the class exists;

(6) Separate voting by classes is required by each class of members that:

- (i) Are to be reclassified under the plan of domestication into a different class of memberships, or into obligations, rights to acquire memberships, cash, other property, or any combination of the foregoing;
- (ii) Would be entitled to vote as a separate group on a provision of the plan that, if contained in a proposed amendment to articles of incorporation, would require action by separate classes; or
- (iii) Is entitled under the articles of incorporation or bylaws to vote as a class to approve an amendment of the articles of incorporation;

(7) If any provision of the articles of incorporation, bylaws, or an agreement to which any of the directors, members of a designated body, or members are parties, adopted or entered into before the effective date of this Act, applies to a merger of the corporation and that document does not refer to a domestication of the corporation, the provision shall be deemed to apply to a domestication of the corporation until such time as the provision is amended subsequent to that date.

Section 20. That the code be amended by adding a NEW SECTION to read:

(a) Articles of domestication must be signed on behalf of the domesticating corporation by any officer or other duly authorized representative. The articles of domestication must set forth:

- (1) The name and jurisdiction of incorporation of the domesticating corporation;
- (2) The name and jurisdiction of incorporation of the domesticated entity; and
- (3) If the domesticating corporation is a domestic nonprofit corporation, a statement that the plan of domestication was approved in accordance with the laws of this state, or, if the domesticating corporation is a foreign nonprofit corporation, a statement that the domestication was approved in accordance with the laws of its jurisdiction of

1 incorporation.

2 (b) If the domesticated corporation is a domestic nonprofit corporation, the articles of
3 domestication shall contain all of the provisions required to be contained in the articles of
4 incorporation of a nonprofit corporation as set forth in § 47-22-6. The name of the domesticated
5 corporation must satisfy the requirements of §§ 47-22-7 and 47-22-8.1.

6 (c) The articles of domestication must be delivered to the Office of the Secretary of State
7 for filing.

8 (d) If the domesticating corporation is a qualified foreign nonprofit corporation, its
9 certificate of authority is cancelled automatically on the effective date of its domestication.

10 Section 21. That the code be amended by adding a NEW SECTION to read:

11 (a) Except as otherwise prohibited by law, when a domestication becomes effective:

12 (1) The title to all real and personal property, both tangible and intangible, of the
13 domesticating corporation remains in the domesticated corporation without reversion
14 or impairment;

15 (2) The liabilities of the domesticating corporation remain the liabilities of the
16 domesticated corporation;

17 (3) An action or proceeding pending against the domesticating corporation continues
18 against the domesticated corporation as if the domestication had not occurred;

19 (4) The articles of domestication, or the articles of incorporation attached to the articles
20 of domestication, constitute the articles of incorporation of a foreign corporation
21 domesticating in this state;

22 (5) The memberships in the domesticating corporation are reclassified into memberships,
23 obligations, rights to acquire memberships, or cash or other property in accordance
24 with the terms of the domestication, and the members are entitled only to the rights

1 provided by those terms; and

2 (6) The domesticating corporation is deemed to:

3 (i) Be incorporated under and subject to the same body of law of as the
4 domesticated corporation for all purposes; and

5 (ii) Be the same corporation without interruption as the domesticating corporation.

6 (b) The personal liability of a member in a foreign nonprofit corporation that is domesticated
7 in this state is as follows:

8 (1) The domestication does not discharge any personal liability under the laws of the
9 foreign jurisdiction to the extent any such personal liability arose before the effective
10 time of the articles of domestication;

11 (2) The member does not have personal liability under the laws of the foreign
12 jurisdiction for any debt, obligation, or liability of the corporation that arises after the
13 effective time of the articles of domestication;

14 (3) The provisions of the laws of the foreign jurisdiction continue to apply to the
15 collection or discharge of any personal liability preserved by subdivision (1), as if the
16 domestication had not occurred;

17 (4) The member has whatever rights of contribution from other members are provided
18 by the laws of the foreign jurisdiction with respect to any personal liability preserved
19 by subdivision (1), as if the domestication had not occurred.

20 Section 22. That the code be amended by adding a NEW SECTION to read:

21 (a) Unless otherwise provided in a plan of domestication of a domestic nonprofit
22 corporation, after the plan has been adopted and approved, and at any time before the
23 domestication has become effective, it may be abandoned by the board of directors without
24 action by the members.

1 (b) If a domestication is abandoned under paragraph (a) after articles of domestication have
2 been filed with the Office of the Secretary of State but before the domestication has become
3 effective, a statement that the domestication has been abandoned in accordance with this
4 section, signed by an officer or other duly authorized representative, must be delivered to the
5 Office of the Secretary of State for filing prior to the effective date of the domestication. The
6 statement takes effect upon filing and the domestication is abandoned and does not become
7 effective.

8 (c) If the domestication of a foreign nonprofit corporation in this state is abandoned in
9 accordance with the laws of the foreign jurisdiction after articles of domestication are filed with
10 the Office of the Secretary of State, a statement that the domestication has been abandoned,
11 signed by an officer or other duly authorized representative, must be delivered to the Office of
12 the Secretary of State for filing. The statement takes effect upon filing and the domestication
13 is abandoned and does not become effective.

14 Section 23. That the code be amended by adding a NEW SECTION to read:

15 (a) A domestic nonprofit corporation may become a domestic business corporation pursuant
16 to a plan of for-profit conversion.

17 (b) A domestic nonprofit corporation may become a foreign business corporation if the
18 for-profit conversion is permitted by the laws of the foreign jurisdiction. Regardless of whether
19 the laws of the foreign jurisdiction require the adoption of a plan of for-profit conversion, the
20 foreign for-profit conversion shall be approved by the adoption by the domestic nonprofit
21 corporation of a plan of for-profit conversion.

22 (c) The plan of for-profit conversion must include:

23 (1) The terms and conditions of the conversion;

24 (2) The manner and basis of:

1 (i) Issuing at least one share in the corporation following its conversion; and

2 (ii) Otherwise reclassifying the memberships in the corporation, if any, following
3 its conversion into shares and other securities, obligations, rights to acquire
4 shares or other securities, cash, other property, or any combination of the
5 foregoing;

6 (3) Any desired amendments to the articles of incorporation or bylaws of the corporation
7 following its conversion; and

8 (4) If the domestic nonprofit corporation is to be converted to a foreign business
9 corporation, a statement of the jurisdiction in which the corporation will be
10 incorporated after the conversion.

11 (d) The plan of for-profit conversion may also include a provision that the plan may be
12 amended prior to filing articles of for-profit conversion, except that subsequent to approval of
13 the plan by the members the plan may not be amended without the approval of the members to
14 change:

15 (1) The amount or kind of shares and other securities, obligations, rights to acquire
16 shares or other securities, cash, or other property to be received by the members
17 under the plan;

18 (2) The articles of incorporation to be in effect immediately following the conversion;
19 or

20 (3) Any of the other terms or conditions of the plan if the change would adversely affect
21 any of the members in any material respect.

22 (e) If any debt security, note, or similar evidence of indebtedness for money borrowed,
23 whether secured or unsecured, or a contract of any kind, issued, incurred, or executed by a
24 domestic nonprofit corporation before the effective date of this Act contains a provision

1 applying to a merger of the corporation and the document does not refer to a for-profit
2 conversion of the corporation, the provision shall be deemed to apply to a for-profit conversion
3 of the corporation until such time as the provision is amended subsequent to that date.

4 (f) The attorney general shall be provided with notice of the proposed for-profit conversion
5 at least ten days prior to any conversion.

6 Section 24. That the code be amended by adding a NEW SECTION to read:

7 In the case of a conversion of a domestic nonprofit corporation to a domestic or foreign
8 business corporation:

9 (1) The plan of for-profit conversion must be adopted by the board of directors;

10 (2) After adopting the plan of for-profit conversion, the board of directors must submit
11 the plan to the members for their approval if there are members entitled to vote on
12 the plan. The board of directors must also transmit to the members a recommendation
13 that the members approve the plan, unless the board of directors makes a
14 determination that because of conflicts of interest or other special circumstances it
15 should not make such a recommendation, in which case the board of directors must
16 transmit to the members the basis for that determination;

17 (3) The board of directors may condition its submission of the plan of for-profit
18 conversion to the members on any basis;

19 (4) If the approval of the members is to be given at a meeting, the corporation must
20 notify each member of the meeting of members at which the plan of for-profit
21 conversion is to be submitted for approval. The notice must state that the purpose,
22 or one of the purposes, of the meeting is to consider the plan and must contain or be
23 accompanied by a copy or summary of the plan. The notice shall include or be
24 accompanied by a copy of the proposed articles of incorporation to be in effect

1 immediately after the for-profit conversion;

2 (5) Unless the articles of incorporation, or the board of directors acting pursuant to
3 subdivision (3), require a greater vote or a greater number of votes to be present, the
4 approval of the plan of for-profit conversion by the members requires the approval
5 of each class of members of the corporation voting as a separate class at a meeting
6 at which a quorum of the class exists; and

7 (6) If any provision of the articles of incorporation, bylaws, or an agreement to which
8 any of the directors or members are parties, adopted or entered into before the
9 effective date of this Act, applies to a merger of the corporation and the document
10 does not refer to a for-profit conversion of the corporation, the provision shall be
11 deemed to apply to a for-profit conversion of the corporation until such time as the
12 provision is amended subsequent to that date.

13 Section 25. That the code be amended by adding a NEW SECTION to read:

14 (a) Articles of for-profit conversion must be signed on behalf of the converting corporation
15 by any officer or other duly authorized representative. The articles must set forth:

16 (1) If the surviving corporation is a domestic business corporation, the name of the
17 corporation immediately before the filing of the articles of for-profit conversion and
18 if that name does not satisfy the requirements of the business corporation act, or the
19 corporation desires to change its name in connection with the conversion, a name that
20 satisfies the requirements of the business corporation act;

21 (2) If the surviving corporation is a foreign business corporation, its name after the
22 conversion and its jurisdiction of incorporation; and

23 (3) A statement that the plan of for-profit conversion was duly approved by the members
24 in the manner required by this Act and the articles of incorporation.

1 (b) If the surviving corporation is a domestic business corporation, the articles of for-profit
2 conversion shall either contain all of the provisions that the business corporation act requires
3 to be set forth in the articles of incorporation of a domestic business corporation and any other
4 desired provisions permitted by the business corporation act, or shall have attached articles of
5 incorporation that satisfy the requirements of the business corporation act. In either case,
6 provisions that would not be required to be included in restated articles of incorporation of a
7 domestic business corporation may be omitted, except that the name and address of the initial
8 registered agent of the business corporation must be included.

9 (c) The articles of for-profit conversion must be delivered to the Office of the Secretary of
10 State for filing.

11 Section 26. That the code be amended by adding a NEW SECTION to read:

12 (a) Except as otherwise prohibited by law, when a conversion of a domestic nonprofit
13 corporation to a domestic or foreign business corporation becomes effective:

14 (1) The title to all real and personal property, both tangible and intangible, of the
15 corporation remains in the corporation without reversion or impairment;

16 (2) The liabilities of the corporation remain the liabilities of the corporation;

17 (3) An action or proceeding pending against the corporation continues against the
18 corporation as if the conversion had not occurred;

19 (4) The articles of incorporation of the domestic or foreign business corporation become
20 effective;

21 (5) The memberships of the corporation are reclassified into shares or other securities,
22 obligations, rights to acquire shares or other securities, or into cash or other property
23 in accordance with the plan of conversion, and the members are entitled only to the
24 rights provided in the plan of for-profit conversion; and

1 (6) The corporation is deemed to:

2 (i) Be a domestic or foreign business corporation for all purposes; and

3 (ii) Be the same corporation without interruption as the nonprofit corporation.

4 (b) The personal liability of a member in a domestic nonprofit corporation that converts to
5 a domestic business corporation is as follows:

6 (1) The conversion does not discharge any personal liability of the member as a member
7 of the nonprofit corporation to the extent any such personal liability arose before the
8 effective time of the articles of for-profit conversion;

9 (2) The member does not have personal liability for any debt, obligation, or liability of
10 the business corporation that arises after the effective time of the articles of for-profit
11 conversion;

12 (3) The laws of this state continue to apply to the collection or discharge of any personal
13 liability preserved by subdivision (1), as if the conversion had not occurred;

14 (4) The member has whatever rights of contribution from other members are provided
15 by the laws of this state with respect to any personal liability preserved by
16 subdivision (1), as if the conversion had not occurred.

17 (c) A member who becomes subject to personal liability for some or all of the debts,
18 obligations, or liabilities of the business corporation has personal liability only for those debts,
19 obligations, or liabilities of the business corporation that arise after the effective time of the
20 articles of for-profit conversion.

21 Section 27. That the code be amended by adding a NEW SECTION to read:

22 (a) Unless otherwise provided in a plan of for-profit conversion of a domestic nonprofit
23 corporation, after the plan has been adopted and approved, and at any time before the for-profit
24 conversion has become effective, it may be abandoned by the board of directors without action

1 by the members.

2 (b) If a for-profit conversion is abandoned under paragraph (a) after articles of for-profit
3 conversion are filed with the Office of the Secretary of State but before the for-profit conversion
4 has become effective, a statement that the for-profit conversion has been abandoned in
5 accordance with this section, signed by an officer or other duly authorized representative, must
6 be delivered to the Office of the Secretary of State for filing prior to the effective date of the
7 for-profit conversion. The statement takes effect upon filing and the for-profit conversion is
8 abandoned and does not become effective.

9 Section 28. That the code be amended by adding a NEW SECTION to read:

10 A foreign business corporation may become a domestic nonprofit corporation if the
11 domestication and conversion is permitted by the laws of the foreign jurisdiction.

12 Section 29. That the code be amended by adding a NEW SECTION to read:

13 (a) After the conversion of a foreign business corporation to a domestic nonprofit
14 corporation is authorized as required by the laws of the foreign jurisdiction, articles of
15 domestication and conversion shall be signed by any officer or other duly authorized
16 representative. The articles shall set forth:

17 (1) The name of the corporation immediately before the filing of the articles of
18 domestication and conversion and, if that name is unavailable for use in this state or
19 the corporation desires to change its name in connection with the domestication and
20 conversion, a name that satisfies the requirements §§ 47-22-7 and 47-22-8.1;

21 (2) The jurisdiction of incorporation of the corporation immediately before the filing of
22 the articles of domestication and conversion and the date the corporation was
23 incorporated in that jurisdiction; and

24 (3) A statement that the domestication and conversion of the corporation in this state was

1 duly authorized as required by the laws of the jurisdiction in which the corporation
2 was incorporated immediately before its domestication and conversion in this state.

3 (b) The articles of domestication and conversion shall contain all of the provisions required
4 to be contained in the articles of incorporation of a nonprofit corporation as set forth in
5 § 47-22-6. The name of the domesticated corporation must satisfy the requirements of
6 §§ 47-22-7 and 47-2-2-8.1.

7 (c) The articles of domestication and conversion must be delivered to the Office of the
8 Secretary of State for filing.

9 Section 30. That the code be amended by adding a NEW SECTION to read:

10 (a) When a domestication and conversion of a foreign business corporation to a domestic
11 nonprofit corporation becomes effective:

12 (1) The title to all real and personal property, both tangible and intangible, of the
13 corporation remains in the corporation without reversion or impairment;

14 (2) The liabilities of the corporation remain the liabilities of the corporation;

15 (3) An action or proceeding pending against the corporation continues against the
16 corporation as if the domestication and conversion had not occurred;

17 (4) The articles of domestication and conversion, or the articles of incorporation attached
18 to the articles of domestication and conversion, constitute the articles of
19 incorporation of the corporation;

20 (5) Memberships, securities, obligations, rights to acquire memberships or securities of
21 the corporation, or cash or other property shall be issued or paid as provided pursuant
22 to the laws of the foreign jurisdiction; and

23 (6) The corporation is deemed to:

24 (i) Be a domestic corporation for all purposes; and

1 (ii) Be the same corporation without interruption as the foreign business
2 corporation.

3 (b) The personal liability of a shareholder of the foreign business corporation who becomes
4 a member of the domestic nonprofit corporation in the domestication and conversion is as
5 follows:

6 (1) The domestication and conversion does not discharge any personal liability under the
7 laws of the foreign jurisdiction to the extent any such personal liability arose before
8 the effective time of the articles of domestication and conversion;

9 (2) The member does not have personal liability under the laws of the foreign
10 jurisdiction for any debt, obligation, or liability of the corporation that arises after the
11 effective time of the articles of domestication and conversion;

12 (3) The provisions of the laws of the foreign jurisdiction continue to apply to the
13 collection or discharge of any personal liability preserved by subdivision (1), as if the
14 domestication and conversion had not occurred;

15 (4) The member has whatever rights of contribution from other members are provided
16 by the laws of the foreign jurisdiction with respect to any personal liability preserved
17 by subdivision (1), as if the domestication and conversion had not occurred.

18 (c) A shareholder of a foreign business corporation who becomes subject to personal liability
19 for some or all of the debts, obligations, or liabilities of the corporation as a result of its
20 domestication and conversion in this state has personal liability only for those debts, obligations,
21 or liabilities of the corporation that arise after the effective time of the articles of domestication
22 and conversion.

23 Section 31. That the code be amended by adding a NEW SECTION to read:

24 If the domestication and conversion of a foreign business corporation to a domestic

1 nonprofit corporation is abandoned in accordance with the laws of the foreign jurisdiction after
2 articles of domestication and conversion have been filed with the Office of the Secretary of
3 State, a statement that the domestication and conversion has been abandoned, signed by an
4 officer or other duly authorized representative, must be delivered to the Office of the Secretary
5 of State for filing. The statement takes effect upon filing and the domestication and conversion
6 is abandoned and does not become effective.

7 Section 32. That the code be amended by adding a NEW SECTION to read:

8 (a) Except as otherwise prohibited by law, when a conversion under sections 28 to 37,
9 inclusive, of this Act, becomes effective:

- 10 (1) The title to all real and personal property, both tangible and intangible, of the
11 converting entity remains in the surviving entity without reversion or impairment;
- 12 (2) The liabilities of the converting entity remain the liabilities of the surviving entity;
- 13 (3) An action or proceeding pending against the converting entity continues against the
14 surviving entity as if the conversion had not occurred;
- 15 (4) In the case of a surviving entity that is a filing entity, its articles of incorporation or
16 governing documents and rules become effective;
- 17 (5) The memberships or interests of the converting entity are reclassified into
18 memberships, interests, other securities, obligations, rights to acquire memberships,
19 interests or securities, or into cash or other property in accordance with the plan of
20 conversion; and the members or of the converting entity are entitled only to the rights
21 provided to them under the terms of the conversion and to any appraisal rights they
22 may have under the governing law of the converting entity; and
- 23 (6) The surviving entity is deemed to:
24 (i) Be incorporated or organized under and subject to the governing law of the

1 converting entity for all purposes; and

2 (ii) Be the same nonprofit corporation or unincorporated entity without
3 interruption as the converting entity.

4 (b) A member who is subject to personal liability for some or all of the debts, obligations,
5 or liabilities of the surviving entity has personal liability only for those debts, obligations, or
6 liabilities of the surviving entity that arise after the effective time of the articles of entity
7 conversion.

8 Section 33. That the code be amended by adding a NEW SECTION to read:

9 (a) Unless otherwise provided in a plan of entity conversion of a domestic nonprofit
10 corporation, after the plan is adopted and at any time before the entity conversion has become
11 effective, it may be abandoned by the board of directors without action by the members.

12 (b) If an entity conversion is abandoned after articles of entity conversion are filed with the
13 Office of the Secretary of State but before the entity conversion becomes effective, a statement
14 that the entity conversion has been abandoned in accordance with this section, signed by an
15 officer or other duly authorized representative, must be delivered to the Office of the Secretary
16 of State for filing prior to the effective date of the entity conversion. Upon filing, the statement
17 takes effect and the entity conversion is abandoned and does not become effective.

18 Section 34. That the code be amended by adding a NEW SECTION to read:

19 A domestic business corporation may become a domestic nonprofit corporation pursuant to
20 a plan of nonprofit conversion only if incorporating pursuant to this Act is not prohibited by any
21 other law of this state. If the law of a domestic business corporation does not provide procedures
22 for the approval of either a nonprofit conversion or a merger, a plan of nonprofit conversion
23 must be adopted and approved, and the conversion effectuated in accordance with this Act.

24 Section 35. That the code be amended by adding a NEW SECTION to read:

(a) The plan of nonprofit conversion must be adopted by the shareholders. The plan for nonprofit conversion must include:

- (1) The terms and conditions of the conversion;
- (2) The manner and basis of reclassifying the shareholders in the corporation;
- (3) Any desired amendments to the articles of incorporation or bylaws of the corporation following its conversion;
- (4) The articles of incorporation to be in effect immediately following the conversion; and
- (5) Any of the terms or conditions of the plan if the change would adversely affect any of the shareholders in any material respect.

The plan for nonprofit conversion may also include a provision that the plan may be amended prior to filing articles of nonprofit conversion.

(b) After the plan for nonprofit conversion is authorized, the articles of conversion must be signed on behalf of the converting corporation by any officer or other duly authorized representative.

The articles shall set forth:

- (1) The name of the corporation immediately before the filing of the articles of conversion and, if that name is unavailable for use in this state or the corporation desires to change its name in connection with the conversion, a name that satisfies the requirements of §§ 47-22-7 and 47-2-8.1;
- (2) The jurisdiction of incorporation of the corporation immediately before the filing of the articles of conversion and the date the corporation was incorporated; and
- (3) A statement that the conversion of the corporation in this state was duly authorized as required by the laws of this state.

(c) The articles of conversion shall contain all of the provisions required to be contained in the articles of incorporation of a nonprofit corporation as set forth in § 47-22-6 and any other desired provisions permitted to be included. Provisions that would not be required to be included in restated articles of incorporation may be omitted, except that the name and address of the initial registered agent of the domestic business corporation must be included.

(d) The articles of nonprofit conversion must be delivered to the Office of the Secretary of State for filing.

Section 36. That the code be amended by adding a NEW SECTION to read:

(a) When a conversion of a domestic business corporation to a domestic nonprofit corporation becomes effective:

(1) The title to all real and personal property, both tangible and intangible, of the corporation remains in the corporation without reversion or impairment;

(2) The liabilities of the corporation remain the liabilities of the corporation;

(3) An action or proceeding pending against the corporation continues against the corporation as if the conversion had not occurred;

(4) The articles of conversion, or the articles of incorporation attached to the articles of conversion, constitute the articles of incorporation of the corporation;

(5) Memberships, securities, obligations, rights to acquire memberships or securities of the corporation, or cash or other property shall be issued or paid as provided pursuant to the laws of this state; and

(6) The corporation is deemed to:

(i) Be a domestic nonprofit corporation for all purposes; and

(ii) Be the same corporation without interruption.

(b) The personal liability of a shareholder of the domestic business corporation who

1 becomes a member of the domestic nonprofit corporation in the conversion is as follows:

2 (1) The conversion does not discharge any personal liability under the laws of this state
3 to the extent any such personal liability arose before the effective time of the articles
4 of conversion;

5 (2) The member does not have personal liability under the laws of this state for any debt,
6 obligation, or liability of the corporation that arises after the effective time of the
7 articles of conversion;

8 (3) The provisions of the laws of this state continue to apply to the collection or
9 discharge of any personal liability preserved by subdivision (1), as if the conversion
10 had not occurred;

11 (4) The member has whatever rights of contribution from other members are provided
12 by the laws of this state with respect to any personal liability preserved by
13 subdivision (1), as if the conversion had not occurred.

14 (c) A shareholder of a domestic business corporation who becomes subject to personal
15 liability for some or all of the debts, obligations, or liabilities of the corporation as a result of
16 its conversion in this state has personal liability only for those debts, obligations, or liabilities
17 of the corporation that arise after the effective time of the articles of conversion.

18 Section 37. That the code be amended by adding a NEW SECTION to read:

19 If the conversion of a domestic business corporation to a domestic nonprofit corporation is
20 abandoned in accordance with the laws of this state after articles of conversion have been filed
21 with the Office of the Secretary of State, a statement that the conversion has been abandoned,
22 signed by an officer or other duly authorized representative, must be delivered to the Office of
23 the Secretary of State for filing. The statement takes effect upon filing and the conversion is
24 abandoned and does not become effective.