

S HB 2869

FILED

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 2004



ENROLLED

House Bill No. 2869

(By Mr. Speaker, Mr Kiss, and Delegates Amores,
Azinger, Craig, Mahan, Armstead and Trump)



Passed March 21, 2005

In Effect Ninety Days from Passage

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E N R O L L E D

H. B. 2869

(BY MR. SPEAKER, MR KISS, AND DELEGATES AMORES,
AZINGER, CRAIG, MAHAN, ARMSTEAD AND TRUMP)

[Passed March 21, 2005; in effect ninety days from passage.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §31D-11-1109, relating to permit the conversion of a domestic corporation to a domestic limited liability company.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §31D-11-1109, to read as follows:

ARTICLE 11. MERGERS AND SHARE EXCHANGES.

§31D-11-1109. Conversion of a domestic corporation to a domestic limited liability company.

- 1 (a) A corporation of this state may convert to a limited
- 2 liability company, in accordance with this section.

3 (b) The Board of Directors of the corporation which desires
4 to convert under this section shall adopt a plan of conversion
5 approving the conversion and recommending the approval of
6 the conversion by the shareholders of the corporation. Such
7 resolution shall be submitted to the shareholders of the corpora-
8 tion at an annual or special meeting. The corporation must
9 notify each shareholder, whether or not entitled to vote of the
10 meeting of shareholders at which the plan of conversion is to be
11 submitted for approval. At the meeting, the plan of conversion
12 shall be considered and a vote taken for its adoption or rejec-
13 tion. Approval of the plan of conversion requires the approval
14 of all of the shareholders, whether or not entitled to vote.

15 (c) After a plan of conversion is approved pursuant to
16 subsection (b) of this section, the corporation shall file with the
17 office of the Secretary of State articles of conversion which
18 satisfy the requirements for articles of organization under
19 section two hundred three, article two, chapter thirty-one-b of
20 this code and which set forth:

21 (1) The name of the corporation, and if it has been changed,
22 the name under which it was originally incorporated;

23 (2) The date of filing of its original articles of incorporation
24 with the office of the Secretary of State;

25 (3) The name of the limited liability company into which
26 the corporation shall be converted; and

27 (4) That the conversion has been approved in accordance
28 with the provisions of this section.

29 (d) Upon the filing of articles of conversion in accordance
30 with subsection (c) of this section and payment to the Secretary
31 of State of all fees prescribed, the Secretary of State shall issue
32 a certificate of conversion. Such certificate of the Secretary of

33 State shall be prima facie evidence of the conversion of the
34 corporation.

35 (e) A conversion takes effect when the articles of conver-
36 sion are filed in the office of the Secretary of State or at any
37 later date specified in the articles of conversion.

38 (f) The conversion of a corporation pursuant to articles of
39 conversion under this section shall not be deemed to affect any
40 obligations or liabilities of the corporation incurred prior to the
41 conversion or the personal liability of any person incurred prior
42 to the conversion.

43 (g) After the time the certificate of conversion becomes
44 effective the corporation shall continue to exist as a limited
45 liability company and the laws of this state shall apply to the
46 entity to the same extent as prior to that time.

47 (h) Unless otherwise provided in the plan of conversion
48 adopted in accordance with this section, the converting corpora-
49 tion shall not be required to wind up its affairs or pay its
50 liabilities and distribute its assets, and the conversion shall not
51 constitute a dissolution of the corporation and shall constitute
52 a continuation of the existence of the converting corporation in
53 the form of a limited liability company of this state.

54 (i) When a corporation has been converted to a limited
55 liability corporation pursuant to this section, the limited liability
56 company shall, for all purposes of the laws of this state, be
57 deemed to be the same entity as the converting corporation, and
58 all of the rights, privileges and powers of the corporation that
59 has been converted, and all property, real, personal and mixed,
60 and all debts due to the corporation, as well as all other things
61 and causes of action belonging to the corporation, shall remain
62 vested in the limited liability company to which the corporation
63 has been converted and shall be the property of the limited
64 liability company, and the title to any real property vested by

65 deed or otherwise in the corporation shall not revert or in any
66 way be impaired by reason of this chapter; but all rights of
67 creditors and all liens upon the property of the corporation shall
68 be preserved unimpaired, and all debts, liabilities and duties of
69 the corporation that has been converted shall remain attached to
70 the limited liability company to which the corporation has been
71 converted, and may be enforced against it to the same extent as
72 if said debts, liabilities and duties had originally been incurred
73 or contracted by it in its capacity as a limited liability company.
74 The rights, privileges, powers and interests in property of the
75 corporation, as well as the debts, liabilities and duties of the
76 corporation, shall not be deemed, as a consequence of the
77 conversion, to have been transferred to the limited liability
78 company to which the corporation has been converted for any
79 purpose of the laws of this state.

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chandy White
Chairman Senate Committee

W. Rube Bunn
Chairman House Committee

Originating in the House.

In effect ninety days from passage.

David E. Holmes
Clerk of the Senate

Bryan M. Day
Clerk of the House of Delegates

Carl Ray Tomblin
President of the Senate

[Signature]
Speaker of the House of Delegates

The within *is approved* this the *18*
day of *April*, 2005.

[Signature]
Governor

PRESENTED TO THE
GOVERNOR

Date 3/28/05

Time 3:45p