

1 HOUSE BILL NO. 463

2 INTRODUCED BY S. FITZPATRICK

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING A LIMITED LIABILITY COMPANY TO CONVERT TO A
5 CORPORATION OR A LIMITED LIABILITY PARTNERSHIP; PROVIDING REQUIREMENTS FOR A
6 CONVERSION; REQUIRING ALL MEMBERS TO AGREE TO THE CONVERSION; PROVIDING
7 REQUIREMENTS FOR DOCUMENTS THAT MUST BE SUBMITTED IN WRITING; PROVIDING FOR THE
8 EFFECTIVE DATE OF A THE LIMITED LIABILITY COMPANY CONVERSION; AND AMENDING SECTION
9 35-8-307, MCA."

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

12
13 NEW SECTION. **Section 1. Conversion of limited liability company to domestic corporation or**
14 **limited liability partnership.** (1) A limited liability company may be converted to a domestic corporation or a
15 limited liability partnership pursuant to this section.

16 (2) The terms and conditions of a conversion of a limited liability company to a domestic
17 corporation or a limited liability partnership must be approved by all of the members.

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

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

23 (b) contain the name of the converting domestic corporation, the name, jurisdiction of formation,
24 and type of entity of the converted entity, and other terms and conditions of the conversion.

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

28 (a) a statement that the limited liability company was converted to a domestic corporation or limited

1 liability partnership from a limited liability company;

2 (b) its former name;

3 (c) a statement that all voting members voted unanimously for the conversion; and

4 (d) a statement that the limited liability company is to be canceled as of the date on which the
5 conversion took effect.

6 (5) The filing of articles of organization under subsection (4) cancels the certificate of the limited
7 liability company as of the date on which the conversion took effect.

8 (6) A conversion takes effect when the required documentation is filed in the office of the secretary
9 of state or at a later date specified in the articles of incorporation or registration of limited liability partnership.

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

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13 **Section 2.** Section 35-8-307, MCA, is amended to read:

14 **"35-8-307. Management and voting.** (1) Unless the articles of organization or the operating
15 agreement provide otherwise, in a member-managed company:

16 (a) each member has equal rights in the management and conduct of the company's business;
17 and

18 (b) except as provided in subsection (3), any matter relating to the business of the company may
19 be decided by a majority of the members.

20 (2) Unless the articles of organization or the operating agreement provide otherwise, in a manager-
21 managed company:

22 (a) each manager has equal rights in the management and conduct of the company's business;

23 (b) except as provided in subsection (3), any matter relating to the business of the company may
24 be exclusively decided by the manager or, if there is more than one manager, by a majority of the managers;
25 and

26 (c) a manager:

27 (i) must be designated, appointed, elected, removed, or replaced by a vote, approval, or consent
28 of a majority of the members; and

1 (ii) holds office until a successor has been elected and qualified, unless the manager sooner
2 resigns or is removed.

3 (3) Unless the articles of organization or the operating agreement provide otherwise, the only
4 matters of a member-managed or manager-managed company's business requiring the consent of all of the
5 members are:

6 (a) the amendment of the operating agreement under 35-8-109;

7 (b) the authorization or ratification of acts or transactions under 35-8-109(3)(b)(ii) that would
8 otherwise violate the duty of loyalty;

9 (c) an amendment to the articles of organization under 35-8-203;

10 (d) the compromise of an obligation to make a contribution under 35-8-502;

11 (e) the compromise, as among members, of an obligation to make a contribution or return money
12 or other property paid or distributed in violation of this chapter;

13 (f) the making of interim distributions under 35-8-601, including the redemption or repurchase of
14 an interest;

15 (g) the admission of a new member;

16 (h) the use of the company's property to redeem an interest subject to a charging order;

17 (i) the consent to dissolve the company under 35-8-901;

18 (j) a waiver of the right to have the company's business wound up and the company terminated
19 under 35-8-901;

20 (k) the consent of members to merge with another entity under 35-8-1201; and

21 (l) the sale, lease, exchange, or other disposal of all, or substantially all, of the company's
22 property with or without goodwill.

23 (4) Unless the articles of organization or the operating agreement provide otherwise, the
24 management of a series of members is vested in the members associated with the series in proportion to their
25 contribution to the capital of the series as adjusted from time to time to reflect properly any additional
26 contributions or withdrawals from the assets or income of the series by the members associated with the series.

27 (5) Action requiring the consent of members or managers under this chapter may be taken without
28 a meeting.

1 (6) A member or manager may appoint a proxy to vote or otherwise act for the member or
2 manager by signing an appointment instrument, either personally or by the member's or manager's attorney-in-
3 fact.

4 (7) (a) The articles of organization or operating agreement of a limited liability company may:
5 (i) create one or more series of members; or
6 (ii) vest authority in one or more members or managers of the company or in other persons to
7 create one or more series of members that may include, without limitation, rights, powers, and duties senior to
8 any existing series of members.

9 (b) The articles of organization or operating agreement may provide that any member associated
10 with a series of members has no voting rights or has voting rights that differ from other members or other series
11 of members.

12 (c) A series of members may have separate powers, rights, or duties with respect to specified
13 property or obligations of the company or profits and losses associated with specified property or obligations,
14 and any series of members may have a separate business purpose or investment objective.

15 (8) The articles of organization or operating agreement must provide that all of the members must
16 agree to a conversion to a limited liability partnership or domestic corporation under [section 1]."
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18 NEW SECTION. Section 3. Codification instruction. [Section 1] is intended to be codified as an
19 integral part of Title 35, chapter 8, and the provisions of Title 35, chapter 8, apply to [section 1].
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