

HOUSE BILL NO. 463

INTRODUCED BY S. FITZPATRICK

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING A LIMITED LIABILITY COMPANY TO CONVERT TO A CORPORATION OR A LIMITED LIABILITY PARTNERSHIP; PROVIDING REQUIREMENTS FOR A CONVERSION; REQUIRING ALL MEMBERS TO AGREE TO THE CONVERSION; PROVIDING REQUIREMENTS FOR DOCUMENTS THAT MUST BE SUBMITTED IN WRITING; PROVIDING FOR THE EFFECTIVE DATE OF A THE LIMITED LIABILITY COMPANY CONVERSION; PROVIDING DEFINITIONS; AND AMENDING SECTION 35-8-1205 ~~35-8-307~~, MCA."

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

(Refer to Introduced Bill)

Strike everything after the enacting clause and insert:

NEW SECTION. SECTION 1. CONVERSION OF LIMITED LIABILITY COMPANY TO DOMESTIC CORPORATION OR LIMITED LIABILITY PARTNERSHIP. (1) A LIMITED LIABILITY COMPANY MAY BE CONVERTED TO A DOMESTIC CORPORATION OR A LIMITED LIABILITY PARTNERSHIP PURSUANT TO THIS SECTION.

(2) THE PLAN OF A CONVERSION OF A LIMITED LIABILITY COMPANY TO A DOMESTIC CORPORATION OR A LIMITED LIABILITY PARTNERSHIP MUST BE APPROVED BY ALL OF THE MEMBERS OR BY A NUMBER OR PERCENTAGE OF MEMBERS REQUIRED FOR CONVERSION IN THE OPERATING AGREEMENT. IF AS A RESULT OF THE CONVERSION ONE OR MORE INTEREST HOLDERS OF THE CONVERTING LIMITED LIABILITY COMPANY WOULD BECOME SUBJECT TO INTEREST HOLDER LIABILITY, APPROVAL OF THE PLAN OF CONVERSION MUST REQUIRE THE SIGNING IN CONNECTION WITH THE TRANSACTION, BY EACH AFFECTED INTEREST HOLDER, OF A SEPARATE WRITTEN CONSENT TO BECOME SUBJECT TO THE INTEREST HOLDER LIABILITY.

(3) AN PLAN OF CONVERSION MUST BE IN WRITING AND MUST:

(A) SET FORTH THE TERMS AND CONDITIONS OF THE CONVERSION OF THE INTERESTS OF MEMBERS AND TRANSFEREES OF A LIMITED LIABILITY COMPANY INTO INTERESTS IN THE CONVERTED DOMESTIC CORPORATION OR

LIMITED LIABILITY PARTNERSHIP, INTO CASH OR OTHER CONSIDERATION TO BE PAID OR DELIVERED AS A RESULT OF THE
CONVERSION OF THE INTERESTS OF THE MEMBERS, OR INTO A COMBINATION OF INTERESTS, CASH, OR OTHER
CONSIDERATION; AND

(B) CONTAIN THE NAME OF THE CONVERTING LIMITED LIABILITY COMPANY, THE NAME, JURISDICTION OF
FORMATION, AND TYPE OF ENTITY OF THE CONVERTED DOMESTIC CORPORATION OR LIMITED LIABILITY PARTNERSHIP,
THE FULL TEXT THAT WILL BE IN EFFECT IMMEDIATELY AFTER THE CONVERSION BECOMES EFFECTIVE OF THE ARTICLES
OF INCORPORATION AND BYLAWS OF THE CONVERTED DOMESTIC CORPORATION OR THE PARTNERSHIP AGREEMENT AND
THE APPLICATION FOR REGISTRATION OF THE LIMITED LIABILITY PARTNERSHIP, WHICH MUST BE IN WRITING, AND OTHER
TERMS AND CONDITIONS OF THE CONVERSION.

(4) IN ADDITION TO THE REQUIREMENTS OF SUBSECTION (3), A PLAN OF CONVERSION MAY CONTAIN ANY
OTHER PROVISION NOT PROHIBITED BY LAW. THE TERMS OF A PLAN OF CONVERSION MAY BE MADE DEPENDENT ON
FACTS OBJECTIVELY ASCERTAINABLE OUTSIDE THE PLAN IN ACCORDANCE WITH 35-14-120(11).

(5) AFTER A CONVERSION IS APPROVED UNDER SUBSECTION (2), THE LIMITED LIABILITY COMPANY SHALL
FILE ARTICLES OF CONVERSION AND ALL FILING FEES IN THE OFFICE OF THE SECRETARY OF STATE THAT SATISFY THE
REQUIREMENTS OF TITLE 35 AND THAT CONTAIN:

(A) THE NAME OF THE CONVERTING LIMITED LIABILITY COMPANY;

(B) THE NAME AND TYPE OF ENTITY OF THE CONVERTED DOMESTIC CORPORATION OR LIMITED LIABILITY
PARTNERSHIP;

(C) A STATEMENT THAT THE PLAN OF CONVERSION WAS APPROVED BY THE MEMBERS IN ACCORDANCE
WITH SUBSECTION (2);

(D) IF THE CONVERTED ENTITY IS:

(i) A DOMESTIC CORPORATION, THE ARTICLES OF INCORPORATION OF THE CORPORATION, AS AN
ATTACHMENT, EXCEPT THAT PROVISIONS WOULD NOT BE REQUIRED TO BE INCLUDED IN A RESTATED ARTICLES OF
INCORPORATION MAY BE OMITTED; OR

(ii) A DOMESTIC LIMITED LIABILITY PARTNERSHIP, THE APPLICATION FOR REGISTRATION OF THE LIMITED
LIABILITY PARTNERSHIP, AS AN ATTACHMENT; AND

(F) IF THE ARTICLES OF CONVERSION ARE NOT TO BE EFFECTIVE UPON FILING, THE LATER DATE AND TIME
ON WHICH THE ARTICLES OF CONVERSION WILL BECOME EFFECTIVE, WHICH MAY NOT BE MORE THAN 90 DAYS AFTER THE

1 DATE OF FILING.

2 (6) IF THE CONVERTED ENTITY IS A DOMESTIC CORPORATION, ITS ARTICLES OF INCORPORATION MUST
3 SATISFY THE REQUIREMENTS OF 35-14-202, EXCEPT THAT PROVISIONS THAT WOULD NOT BE REQUIRED TO BE INCLUDED
4 IN RESTATED ARTICLES OF INCORPORATION MAY BE OMITTED FROM THE ARTICLES OF INCORPORATION. IF THE
5 CONVERTED ENTITY IS A DOMESTIC LIMITED LIABILITY PARTNERSHIP, ITS APPLICATION FOR REGISTRATION MUST SATISFY
6 THE REQUIREMENTS OF 35-10-701, EXCEPT THAT THE ARTICLES OF INCORPORATION OR APPLICATION FOR
7 REGISTRATION, AS APPLICABLE, DO NOT NEED TO BE SIGNED.

8 (7) IN ADDITION TO THE REQUIREMENTS OF SUBSECTION (5), THE ARTICLES OF CONVERSION MAY CONTAIN
9 ANY OTHER PROVISION NOT PROHIBITED BY LAW.

10 (8) A CONVERSION TAKES EFFECT WHEN THE ARTICLES OF CONVERSION ARE FILED IN THE OFFICE OF THE
11 SECRETARY OF STATE OR AT A LATER DATE AND TIME SPECIFIED IN THE ARTICLES OF CONVERSION, WHICH MAY NOT BE
12 MORE THAN 90 DAYS AFTER THE DATE OF FILING.

13 (9) THIS SECTION ONLY ALLOWS A DOMESTIC LIMITED LIABILITY COMPANY TO CONVERT TO A DOMESTIC
14 CORPORATION OR A LIMITED LIABILITY PARTNERSHIP.

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16 **NEW SECTION. SECTION 2. EFFECT OF CONVERSION OF LIMITED LIABILITY COMPANY TO DOMESTIC**
17 **CORPORATION OR LIMITED LIABILITY PARTNERSHIP. (1) WHEN A CONVERSION BECOMES EFFECTIVE:**

18 (A) ALL PROPERTY OWNED BY AND EVERY CONTRACT RIGHT POSSESSED BY THE CONVERTING LIMITED
19 LIABILITY COMPANY REMAIN THE PROPERTY AND CONTRACT RIGHTS OF THE CONVERTED DOMESTIC CORPORATION OR
20 LIMITED LIABILITY PARTNERSHIP WITHOUT TRANSFER, REVERSION, OR IMPAIRMENT;

21 (B) ALL DEBTS, OBLIGATIONS, AND OTHER LIABILITIES OF THE CONVERTING LIMITED LIABILITY COMPANY
22 REMAIN THE DEBTS, OBLIGATIONS, AND OTHER LIABILITIES OF THE CONVERTED DOMESTIC CORPORATION OR LIMITED
23 LIABILITY PARTNERSHIP;

24 (C) THE NAME OF THE CONVERTED DOMESTIC CORPORATION OR LIMITED LIABILITY PARTNERSHIP MAY BE
25 BUT NEED NOT BE SUBSTITUTED FOR THE NAME OF THE CONVERTING LIMITED LIABILITY COMPANY IN ANY PENDING
26 ACTION OR PROCEEDING;

27 (D) IF THE CONVERTED ENTITY IS A DOMESTIC CORPORATION, ITS ARTICLES OF INCORPORATION AND
28 BYLAWS BECOME EFFECTIVE;

1 (E) IF THE CONVERTED ENTITY IS A DOMESTIC LIMITED LIABILITY PARTNERSHIP, THE APPLICATION OF
2 REGISTRATION OF THE LIMITED LIABILITY PARTNERSHIP AND ITS PARTNERSHIP AGREEMENT BECOME EFFECTIVE;
3 (F) THE INTERESTS OF THE CONVERTING LIMITED LIABILITY COMPANY ARE RECLASSIFIED INTO SHARES,
4 INTERESTS OR OTHER SECURITIES, OBLIGATIONS, RIGHTS TO ACQUIRE SHARES, ELIGIBLE INTERESTS OR OTHER
5 SECURITIES, CASH, OR OTHER PROPERTY IN ACCORDANCE WITH THE TERMS OF THE PLAN OF CONVERSION, AND THE
6 MEMBERS AND TRANSFEREES OF INTERESTS OF THE CONVERTING LIMITED LIABILITY COMPANY ARE ENTITLED ONLY TO
7 THE RIGHTS PROVIDED TO THEM BY THOSE TERMS AND TO ANY CONTRACTUAL APPRAISAL RIGHTS THEY MAY HAVE UNDER
8 THE ARTICLES OF ORGANIZATION OR THE OPERATING AGREEMENT OF THE CONVERTING LIMITED LIABILITY COMPANY; AND
9 (G) THE CONVERTED DOMESTIC CORPORATION OR LIMITED LIABILITY PARTNERSHIP IS:
10 (I) INCORPORATED OR CREATED UNDER AND SUBJECT TO THE PROVISIONS OF PROVISIONS OF TITLE 35,
11 CHAPTER 14, IN THE CASE OF A CONVERTED DOMESTIC CORPORATION AND THE PROVISIONS OF TITLE 35, CHAPTER 10,
12 APPLICABLE TO A LIMITED LIABILITY PARTNERSHIP IN THE CASE OF A CONVERTED DOMESTIC LIMITED LIABILITY
13 PARTNERSHIP;
14 (II) THE SAME ENTITY WITHOUT INTERRUPTION AS THE CONVERTING LIMITED LIABILITY COMPANY; AND
15 (III) CONSIDERED TO HAVE BEEN INCORPORATED OR CREATED ON THE DATE THAT THE CONVERTING
16 LIMITED LIABILITY COMPANY WAS ORIGINALLY ORGANIZED.
17 (2) EXCEPT AS OTHERWISE PROVIDED IN THE ARTICLES OF INCORPORATION OF A DOMESTIC CORPORATION
18 OR THE ORGANIC LAW OR ORGANIC RULES OF A DOMESTIC LIMITED LIABILITY PARTNERSHIP, AN INTEREST HOLDER OF
19 THE CONVERTING LIMITED LIABILITY COMPANY WHO BECOMES SUBJECT TO INTEREST HOLDER LIABILITY WITH RESPECT
20 TO A DOMESTIC CORPORATION OR LIMITED LIABILITY PARTNERSHIP AS A RESULT OF THE CONVERSION HAS THE INTEREST
21 HOLDER LIABILITY ONLY WITH RESPECT TO INTEREST HOLDER LIABILITIES THAT ARISE AFTER THE CONVERSION BECOMES
22 EFFECTIVE.
23 (3) EXCEPT AS OTHERWISE PROVIDED IN THE ORGANIC LAW OR THE ORGANIC RULES OF THE CONVERTING
24 LIMITED LIABILITY COMPANY, THE INTEREST HOLDER LIABILITY OF AN INTEREST HOLDER IN A CONVERTING LIMITED
25 LIABILITY COMPANY THAT CONVERTS TO A DOMESTIC CORPORATION OR A LIMITED LIABILITY PARTNERSHIP WHO HAD
26 INTEREST HOLDER LIABILITY WITH RESPECT TO THAT CONVERTING LIMITED LIABILITY COMPANY BEFORE THE CONVERSION
27 BECOMES EFFECTIVE IS AS FOLLOWS:
28 (A) THE CONVERSION DOES NOT DISCHARGE THAT PRIOR INTEREST HOLDER LIABILITY WITH RESPECT TO

1 ANY INTEREST HOLDER LIABILITIES THAT AROSE BEFORE THE CONVERSION BECAME EFFECTIVE.

2 (B) THE PROVISIONS OF THE ORGANIC LAW OF THE CONVERTING LIMITED LIABILITY COMPANY CONTINUE TO
3 APPLY TO THE COLLECTION OR DISCHARGE OF ANY INTEREST HOLDER LIABILITIES PRESERVED BY SUBSECTION (3)(A) AS
4 IF THE CONVERSION HAD NOT OCCURRED.

5 (C) THE INTEREST HOLDER HAS THE RIGHTS OF CONTRIBUTION FROM OTHER PERSONS THAT ARE
6 PROVIDED BY THE ORGANIC LAW OR THE ORGANIC RULES OF THE CONVERTING LIMITED LIABILITY COMPANY WITH
7 RESPECT TO ANY INTEREST HOLDER LIABILITIES PRESERVED BY SUBSECTION (3)(A) AS IF THE CONVERSION HAD NOT
8 OCCURRED.

9 (D) THE INTEREST HOLDER DOES NOT, BY REASON OF THE PRIOR INTEREST HOLDER LIABILITY, HAVE
10 INTEREST HOLDER LIABILITY WITH RESPECT TO ANY INTEREST HOLDER LIABILITIES THAT ARISE AFTER THE CONVERSION
11 BECOMES EFFECTIVE.

12 (5) A CONVERSION DOES NOT REQUIRE THE CONVERTING LIMITED LIABILITY COMPANY TO WIND UP ITS
13 AFFAIRS AND DOES NOT CONSTITUTE OR CAUSE THE DISSOLUTION OR TERMINATION OF THE CONVERTING LIMITED
14 LIABILITY COMPANY.

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16 **SECTION 3.** Section 35-8-1205, MCA, is amended to read:

17 **"35-8-1205. Definitions.** As used in this part, the following definitions apply:

18 (1) "APPLICATION FOR REGISTRATION OF LIMITED LIABILITY PARTNERSHIP" MEANS THE APPLICATION FOR
19 REGISTRATION DESCRIBED IN 35-10-701.

20 (2) "ARTICLES OF INCORPORATION" HAS THE SAME MEANING AS PROVIDED IN 35-14-140.

21 (3) "CONVERSION" MEANS A TRANSACTION AUTHORIZED BY [SECTION 1] OR 35-8-1210.

22 (4) "CONVERTED ENTITY" MEANS THE CONVERTING ENTITY AS IT CONTINUES IN EXISTENCE AFTER THE
23 CONVERSION AND INCLUDES A CONVERTED DOMESTIC CORPORATION, CONVERTED LIMITED LIABILITY PARTNERSHIP, AND
24 CONVERTED LIMITED LIABILITY COMPANY, AS APPLICABLE, THAT CONTINUES IN EXISTENCE AFTER THE CONVERSION.

25 (5) "CONVERTING ENTITY" MEANS THE DOMESTIC PARTNERSHIP OR LIMITED PARTNERSHIP THAT APPROVES
26 AN AGREEMENT OF CONVERSION PURSUANT TO 35-8-1210 OR THE CONVERTING LIMITED LIABILITY COMPANY, AS
27 APPLICABLE.

28 (6) "CONVERTING LIMITED LIABILITY COMPANY" MEANS A DOMESTIC LIMITED LIABILITY COMPANY THAT

1 APPROVES A PLAN OF CONVERSION TO A DOMESTIC CORPORATION OR A DOMESTIC LIMITED LIABILITY PARTNERSHIP
2 PURSUANT TO [SECTION 1].

3 ~~(4)-(7)~~ "Corporation" means a corporation formed under the laws of this state or comparable law of
4 another jurisdiction.

5 ~~(8)~~ "DOMESTIC" MEANS, WITH RESPECT TO AN ENTITY, GOVERNED AS TO THE ENTITY'S INTERNAL AFFAIRS
6 BY THE LAWS OF THIS STATE.

7 ~~(2)-(9)~~ "General partner" means a partner in a partnership and a general partner in a limited
8 partnership.

9 ~~(10)~~ "INTEREST HOLDER" HAS THE SAME MEANING AS PROVIDED IN 35-14-140.

10 ~~(11)~~ "INTEREST HOLDER LIABILITY" HAS THE SAME MEANING AS PROVIDED IN 35-14-140.

11 ~~(12)~~ "LIMITED LIABILITY PARTNERSHIP" MEANS A PARTNERSHIP REGISTERED AS A LIMITED LIABILITY
12 PARTNERSHIP UNDER THE LAWS OF THIS STATE OR COMPARABLE LAW OF ANOTHER JURISDICTION.

13 ~~(3)-(13)~~ "Limited partner" means a limited partner in a limited partnership.

14 ~~(4)-(14)~~ "Limited partnership" means a limited partnership formed under the laws of this state or
15 comparable law of another jurisdiction.

16 ~~(15)~~ "ORGANIC LAW" HAS THE SAME MEANING AS PROVIDED IN 35-14-140.

17 ~~(16)~~ "ORGANIC RULES" HAS THE SAME MEANING AS PROVIDED IN 35-14-140.

18 ~~(5)-(17)~~ "Partner" means a general partner or a limited partner.

19 ~~(6)-(18)~~ "Partnership" means a general partnership formed under the laws of this state or comparable
20 law of another jurisdiction.

21 ~~(7)-(19)~~ "Partnership agreement" means an agreement among the partners of a partnership, or a
22 limited partnership, or a limited liability partnership."
23

24 NEW SECTION. SECTION 4. CODIFICATION INSTRUCTION. [SECTIONS 1 AND 2] ARE INTENDED TO BE
25 CODIFIED AS AN INTEGRAL PART OF TITLE 35, CHAPTER 8, AND THE PROVISIONS OF TITLE 35, CHAPTER 8, APPLY TO
26 [SECTIONS 1 AND 2].

27 - END -