CHAPTER 17--H.F.No. 13

An act relating to business organizations; nonprofit corporations; modifying the definition of certain terms; providing certain powers and duties of incorporators and directors; regulating certain mergers and conversions; amending Minnesota Statutes 2016, sections 317A.011, subdivisions 13, 20; 317A.171, subdivisions 1, 2; 317A.203; 317A.241, subdivision 1; 317A.311; 317A.443, subdivision 1; 317A.671; 317A.811, subdivisions 1, 2, 6; proposing coding for new law in Minnesota Statutes, chapter 317A.

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

Section 1. Minnesota Statutes 2016, section 317A.011, subdivision 13, is amended to read:

Subd. 13. **Members with voting rights.** "Members with voting rights" ~~or "voting members"~~ means members or a class of members that has voting rights with respect to the purpose or matter involved.

Sec. 2. Minnesota Statutes 2016, section 317A.011, subdivision 20, is amended to read:

Subd. 20. **Written action.** "Written action" means a ~~written document~~ record signed by all persons required to take the action or consented to by authenticated electronic communication by all ~~of the~~ persons required to take the action. The term also means the counterparts of a ~~written document~~ record signed or consented to by authenticated electronic communication by any of the persons taking the action. A counterpart is the action of the persons signing or consenting to it, and all ~~the~~ counterparts are one written action by all ~~of the~~ persons signing or consenting to them.

Sec. 3. Minnesota Statutes 2016, section 317A.171, subdivision 1, is amended to read:

Subdivision 1. **Role of incorporators.** If the first board is not named in the articles, the incorporators may elect the first board or may act as directors with the powers, rights, duties, and liabilities of directors, until directors are elected. Upon the election and qualification of the first director, the power of the incorporator or incorporators terminates. If the persons who are to serve as directors until the first annual meeting have been named in the articles of incorporation, the power of the incorporator or incorporators to act for the corporation terminates upon filing of the articles.

Sec. 4. Minnesota Statutes 2016, section 317A.171, subdivision 2, is amended to read:

Subd. 2. **Meeting.** After the issuance of the certificate of incorporation, the incorporators or the directors named in the articles shall, within a reasonable time, hold an organizational meeting at the call of a majority of the incorporators or of the directors named in the articles, or take written action, for the purposes of electing directors, transacting business, and taking actions necessary or appropriate to complete the organization of the corporation. If a meeting is held, the persons calling the meeting shall give at least three days' notice of the meeting to each incorporator or director named, stating the date, time, and place of the meeting.

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Sec. 5. Minnesota Statutes 2016, section 317A.203, is amended to read:

317A.203 NUMBER.

A board of directors must consist of three or more individuals, with the number specified in or fixed in accordance with the articles or bylaws. Notwithstanding section 317A.227, if the power to elect or appoint directors is vested in the board of directors and if the number of directors ~~falls below~~ is fewer than three, or such greater minimum number set forth in the articles or bylaws, a majority of the directors in office may appoint or elect the number of additional directors necessary to increase the board to three directors or such greater minimum set forth in the articles or bylaws.

Sec. 6. Minnesota Statutes 2016, section 317A.241, subdivision 1, is amended to read:

Subdivision 1. **Generally.** A resolution approved by the affirmative vote of a majority of the board may establish committees having the authority of the board in the management of the business of the corporation only to the extent provided in the resolution. Committees may include a special litigation committee consisting of one or more independent directors or other independent persons to consider legal rights or remedies of the corporation and whether those rights and remedies should be pursued. Committees other than special litigation committees are subject at all times to the direction and control of the board.

Sec. 7. Minnesota Statutes 2016, section 317A.311, is amended to read:

317A.311 OTHER OFFICERS.

Except to the extent that the articles or bylaws provide that the members may exercise the powers under this section, the board may elect or appoint, in a manner set forth in the articles or bylaws or in a resolution adopted by the board, other officers the board considers necessary for the operation and management of the corporation, each of whom has the powers, rights, duties, responsibilities, and terms in office provided for in the articles or bylaws or determined by the board. Unless reserved to the members with ~~the~~ voting rights, to the extent authorized in the articles, the bylaws, or a resolution approved by the affirmative vote of a majority of the directors present, the president may appoint one or more officers, other than the treasurer.

Sec. 8. Minnesota Statutes 2016, section 317A.443, subdivision 1, is amended to read:

Subdivision 1. **General.** Except for the election of directors, which is governed by section 317A.205, unless this chapter or the articles or bylaws require a greater vote or voting by class, if a quorum is present, or if a quorum has been present at a meeting, the affirmative vote of the majority of the members with voting rights present and entitled to vote, which must also be a majority of the required quorum, is the act of the members.

Sec. 9. **[317A.621] MERGER OF SUBSIDIARY.**

Subdivision 1. **Definitions.** (a) For the purposes of this section, the terms in paragraphs (b) and (c) have the meanings given.

(b) "Parent" means a corporation that directly, or indirectly through related organizations, owns all of the governance and financial interests in a subsidiary.

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(c) "Subsidiary" means an organization having all of its governance and financial interests owned directly, or indirectly through related organizations, by a corporation.

Subd. 2. **When authorized; contents of plan.** A corporation that is a parent of a subsidiary may merge the subsidiary into itself. The merger may be approved by a resolution approved by the affirmative vote of a majority of the directors or other members of the governing body of the parent. The resolution must set forth a plan of merger that contains:

(1) the names of the parent and subsidiary proposing to merge;

(2) the name of the surviving corporation;

(3) the terms and conditions of the proposed merger; and

(4) the manner and basis of converting the governance and financial interests of the subsidiary into membership interest of the surviving corporation, if applicable.

Subd. 3. **Approval by board and members with voting rights.** (a) When a parent has members with voting rights, the board of directors of the parent shall adopt a resolution by the affirmative vote of a majority of all directors approving a proposed plan of merger and directing that the plan be submitted to a vote at a meeting of the members with voting rights. Notice of the meeting must be given to each member with voting rights, accompanied by a copy or summary of the proposed plan. Unless the articles or bylaws require a greater vote, the plan of merger is adopted upon receiving the affirmative vote of a majority of the members with voting rights voting on the action.

(b) When a parent does not have members with voting rights, and unless the articles or bylaws require a greater vote, a plan of merger under this section is adopted at a meeting of the board of directors of the parent upon receiving the affirmative votes of a majority of the directors. Notice of the meeting must be given, accompanied by a copy of the proposed plan of merger.

Subd. 4. **Articles of merger; contents of articles.** Articles of merger must be prepared that contain:

(1) the plan of merger;

(2) a statement that the parent owns directly, or indirectly through related organizations, all of the governance and financial interests of each subsidiary that is a party to the merger;

(3) a statement that the plan of merger has been approved by the parent under this section; and

(4) a statement that the notice to the attorney general required by section 317A.811 has been given and the waiting period has expired or has been waived by the attorney general or a statement that section 317A.811 is not applicable.

Subd. 5. **Articles signed, filed.** The articles of merger must be signed on behalf of the parent and filed with the secretary of state.

Subd. 6. **Certificate.** The secretary of state shall issue a certificate of merger to the parent or the parent's legal representative.

Sec. 10. Minnesota Statutes 2016, section 317A.671, is amended to read:

317A.671 CERTAIN ASSETS NOT TO BE DIVERTED.

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Except as provided in section 501B.31, when a corporation:

(1) converts;

(2) dissolves~~,~~;

(3) merges~~,~~;

(4) substantially changes the use or purposes for which it will use its assets~~, or~~;

(5) consolidates~~,~~;

(6) transfers its assets~~,~~; or

(7) grants a mortgage or other security interest in its assets,

assets of the corporation or a constituent corporation or converting corporation, and assets subsequently received by a single or converted corporation after a merger or consolidation, or held by a converted organization after a conversion may not be diverted from the uses and purposes for which the assets have been received and held, or from the uses and purposes expressed or intended by the original donor.

Sec. 11. **[317A.681] CONVERSION.**

Subdivision 1. **Definitions.** (a) For the purposes of sections 317A.671 to 317A.689, the terms in this section have the meanings given.

(b) "Organizational document" means:

(1) for a domestic or foreign limited liability company, its articles or certificate of organization;

(2) for a trust, its agreement of trust or declaration of trust;

(3) for a domestic or foreign corporation, its articles or certificate of incorporation; and

(4) for any other organization, the basic record that creates the organization.

(c) "Converted organization" means the organization into which a converting organization converts pursuant to sections 317A.681 to 317A.689.

(d) "Converting organization" means an organization that converts into another organization pursuant to sections 317A.681 to 317A.689.

(e) "Converting corporation" means a corporation governed under this chapter.

Subd. 2. **Conversion requirements.** An organization other than a corporation may convert to a corporation, and a corporation may convert to another organization, pursuant to this section, sections 317A.683 to 317A.689, and a plan of conversion if:

(1) the converting organization's governing statute authorizes the conversion;

(2) the conversion is not prohibited by another law of this state or the law of the jurisdiction that enacted the converting organization's governing statute;

(3) the converting organization complies with its governing statute in effecting the conversion;

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(4) the converting organization and the converted organization's governing statute prohibits the organization from:

(i) being formed for a purpose involving pecuniary gain to its members, other than to members that are nonprofit organizations or subdivisions, units, or agencies of the United States or a state or local government; and

(ii) paying dividends or other pecuniary remuneration, directly or indirectly, to its members, other than to members that are nonprofit organizations or subdivisions, units, or agencies of the United States or a state or local government; and

(5) the attorney general has been notified, to the extent applicable under section 317A.811, and any applicable waiting periods under that section have expired.

Subd. 3. **Contents of plan of conversion.** A plan of conversion must include:

(1) the name and form of the converting organization and the jurisdiction of the converting organization's governing statute before conversion;

(2) the name and form of the converted organization and the jurisdiction of the converted organization's governing statute after conversion;

(3) the terms and conditions of the conversion, including the manner and basis for converting interests in the converting organization into interests in the converted organization; and

(4) the organizational documents of the converted organization as they are to be in effect upon completion of the conversion.

Sec. 12. **[317A.683] ACTION ON PLAN OF CONVERSION BY CONVERTING CORPORATION.**

Subdivision 1. **Approval.** A plan of conversion must be approved and adopted by a converting corporation as provided in this section.

Subd. 2. **Approval by board and members with voting rights.** When a corporation has members with voting rights, the board of directors of the corporation shall adopt a resolution by the affirmative vote of a majority of all directors approving a proposed plan of conversion and directing that the plan be submitted to a vote at a meeting of the members with voting rights. Notice of the meeting must be given to each member with voting rights, accompanied by a copy or summary of the proposed plan. Unless the articles or bylaws require a greater vote, the plan of conversion is adopted upon receiving the affirmative vote of a majority of the members with voting rights voting on the action.

Subd. 3. **Approval by board.** When a corporation does not have members with voting rights, and unless the articles or bylaws require a greater vote, a plan of conversion is adopted at a meeting of the board of directors of the corporation upon receiving the affirmative votes of a majority of all directors. Notice of the meeting must be given, accompanied by a copy of the proposed plan of conversion.

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Sec. 13. **[317A.685] FILINGS REQUIRED FOR CONVERSION; EFFECTIVE DATE AND TIME.**

Subdivision 1. **Articles of conversion.** After a plan of conversion is approved:

(1) if the converting organization is a converting corporation, the converting corporation shall file articles of conversion with the secretary of state, which must be signed as provided in section 317A.011, subdivision 19, and must include:

(i) the plan of conversion;

(ii) a statement that the corporation is converting into another organization;

(iii) the name and form of the converted organization and the jurisdiction of its governing statute;

(iv) the time the conversion is effective under the governing statute of the converted organization;

(v) a statement that the conversion was approved as required by this chapter;

(vi) a statement that the conversion was approved as required by the governing statute of the converted organization;

(vii) if the converted organization is a domestic organization, the organizational document of the converted organization;

(viii) if the converted organization is a foreign organization not authorized to transact business in this state, the street address of an office that the secretary of state may use for the purposes of section 317A.689, subdivision 3; and

(ix) if applicable, a statement that the notice to the attorney general required by section 317A.811 has been given and any applicable period has expired or has been waived by the attorney general, or a statement that section 317A.811 is not applicable; and

(2) if the converting organization is not a converting corporation, the converting organization shall file articles of conversion with the secretary of state, which must be signed as provided in section 317A.011, subdivision 19, and must include:

(i) articles of incorporation for the corporation into which the converting organization is converting, which must include the information required by section 317A.111, subdivision 1, clauses (1) and (2);

(ii) the plan of conversion;

(iii) a statement that the converting organization is converting into a corporation;

(iv) the name and form of the converting organization and the jurisdiction of its governing statute;

(v) a statement that the conversion was approved in a manner that complied with the converting organization's governing statute; and

(vi) if applicable, a statement that the notice to the attorney general required by section 317A.811 has been given and any applicable waiting period has expired or has been waived by the attorney general, or a statement that section 317A.811 is not applicable.

Subd. 2. **Effective date and time of conversion.** A conversion becomes effective:

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(1) if the converted organization is a corporation, when the articles of conversion are filed with the secretary of state or on a later date or at a later time specified in the articles of conversion; or

(2) if the converted organization is not a corporation, as provided by the governing statute of the converted organization.

Subd. 3. **Certificate.** The secretary of state shall issue to the converted organization or its legal representative a certificate of conversion and, if the converted organization is a corporation, a certificate of incorporation.

Sec. 14. **[317A.687] ABANDONMENT.**

Subject to any contractual rights, after a conversion is approved, and at any time before articles of conversion are delivered to the secretary of state for filing under section 317A.685, a converting corporation may amend the plan or abandon the conversion:

(1) as provided in the plan; or

(2) except as otherwise prohibited in the plan, by the same consent as was required to approve the plan.

Sec. 15. **[317A.689] EFFECT OF CONVERSION.**

Subdivision 1. **Effect on corporation; general.** When a conversion becomes effective, an organization that has been converted pursuant to sections 317A.681 to 317A.687 is for all purposes the same entity that existed before the conversion, and:

(1) all property owned by the converting organization remains vested in the converted organization and no assignment by operation of law or otherwise of its assets, properties, or contracts shall be deemed to have occurred;

(2) all debts, obligations, or other liabilities of the converting organization continue as debts, obligations, or other liabilities of the converted organization;

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

(4) except as prohibited by law other than this chapter, all rights, privileges, immunities, powers, and purposes of the converting organization remain vested in the converted organization; and

(5) the conversion does not dissolve a converting corporation for the purposes of sections 317A.701 to 317A.791.

Subd. 2. **Effect on fiduciary capacity.** (a) For purposes of this subdivision, "fiduciary capacity" means the capacities of a trustee, executor, administrator, personal representative, guardian, conservator, receiver, escrow agent, agent for the investment of money, attorney-in-fact, or a similar capacity.

(b) Except where the will, declaration of trust, or other instrument provides otherwise, the converted organization is, without further act or deed, the successor of the converting organization in fiduciary capacities in which a corporation was acting at the time of the conversion and is liable to the beneficiaries as fully as if the corporation had continued its prior corporate existence.

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(c) If a converting organization or converting corporation is or has been nominated and appointed in a fiduciary capacity in a will, declaration of trust, or other instrument, order, or judgment before or after the conversion, then even if the will or other instrument, order, or judgment does not become operative or effective until after the conversion becomes effective, every fiduciary capacity and the rights, powers, privileges, duties, discretions, and responsibilities provided for in the nomination or appointment fully vest in and are to be exercised by the converting corporation, whether there are one or more successive conversions.

Subd. 3. **Foreign organization.** A converted organization that is a foreign organization consents to the jurisdiction of the courts of this state to enforce any debt, obligation, or other liability for which the converting corporation is liable if, before the conversion, the converting corporation was subject to suit in this state on the debt, obligation, or other liability. A converted organization that is a foreign organization and not authorized to transact business in this state appoints the secretary of state as its agent for service of process for purposes of enforcing a debt, obligation, or other liability under this subdivision.

Sec. 16. Minnesota Statutes 2016, section 317A.811, subdivision 1, is amended to read:

Subdivision 1. **When required.** (a) Except as provided in subdivision 6, the following corporations shall notify the attorney general of their intent to dissolve, merge, ~~or~~ consolidate, or convert, or to transfer all or substantially all of their assets:

(1) a corporation that holds assets for a charitable purpose as defined in section 501B.35, subdivision 2; or

(2) a corporation that is exempt under section 501(c)(3) of the Internal Revenue Code of 1986, or any successor section.

(b) The notice must include:

(1) the purpose of the corporation that is giving the notice;

(2) a list of assets owned or held by the corporation for charitable purposes;

(3) a description of restricted assets and purposes for which the assets were received;

(4) a description of debts, obligations, and liabilities of the corporation;

(5) a description of tangible assets being converted to cash and the manner in which they will be sold;

(6) anticipated expenses of the transaction, including attorney fees;

(7) a list of persons to whom assets will be transferred, if known, or the name of the converted organization;

(8) the purposes of persons receiving the assets or of the converted organization; and

(9) the terms, conditions, or restrictions, if any, to be imposed on the transferred or converted assets.

The notice must be signed on behalf of the corporation by an authorized person.

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Sec. 17. Minnesota Statutes 2016, section 317A.811, subdivision 2, is amended to read:

Subd. 2. **Restriction on transfers.** Subject to subdivision 3, a corporation described in subdivision 1 may not transfer or convey assets as part of a dissolution, merger ~~or~~, consolidation, or transfer of assets under section 317A.661, and it may not convert until 45 days after it has given written notice to the attorney general, unless the attorney general waives all or part of the waiting period.

Sec. 18. Minnesota Statutes 2016, section 317A.811, subdivision 6, is amended to read:

Subd. 6. **Exception.** Subdivisions 1 to 4 do not apply to a merger with, consolidation into, conversion into, or transfer of assets to an organization exempt under section 501(c)(3) of the Internal Revenue Code of 1986, or any successor section. A corporation that is exempt under this subdivision shall send a copy of the certificate of merger ~~or~~, certificate of consolidation and incorporation, or certificate of conversion to the attorney general.

Sec. 19. **REVISOR'S INSTRUCTION.**

The revisor of statutes shall change the term "voting members" or a similar term to "members with voting rights" or a similar term wherever it appears in the following sections of Minnesota Statutes: sections 317A.011, subdivision 18; 317A.111, subdivision 3; 317A.133, subdivision 4; 317A.431; 317A.433; 317A.434; 317A.435, subdivision 1; 317A.437, subdivision 1; 317A.450, subdivision 2; and 317A.631.

Presented to the governor April 19, 2017

Signed by the governor April 21, 2017, 3:11 p.m.

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