

## Senate Bill 469

By: Senators Smith of the 52nd, Meyer von Bremen of the 12th, Harp of the 29th and Reed of the 35th

**A BILL TO BE ENTITLED  
AN ACT**

1 To amend Title 14 of the Official Code of Georgia Annotated, relating to corporations,  
2 partnerships, and associations, so as to provide for the updating of provisions relating to  
3 corporations, partnerships, and associations; to provide confirmation when an order for relief  
4 with respect to a corporation has been entered pursuant to the federal Bankruptcy Code of  
5 the power and authority of such corporation to take action pursuant to the decree of order or  
6 the court or judge in such bankruptcy proceedings; to provide that a board of directors can  
7 commit a corporation to submit a matter for shareholder approval even if the board of  
8 directors subsequently determines to recommend against it later; to correct cross-references;  
9 to change certain provisions relating to court ordered indemnification and advancement for  
10 expenses; to confirm the authority of a court to order advancement of expenses before  
11 determining a director's ultimate entitlement to indemnification; to provide statutory rules  
12 of construction for language frequently used in mandatory indemnification provisions; to  
13 change certain provisions relating to amendment to articles of incorporation by board of  
14 directors and shareholders; to repeal certain provisions relating to amendment to articles of  
15 incorporation pursuant to reorganization; to clarify existing law by expressly recognizing the  
16 possibility of different treatment of shareholders in a plan of merger or share exchange; to  
17 change certain provisions relating to merger; to change certain provisions relating to share  
18 exchange; to change certain provisions relating to action on plan of merger; to change certain  
19 provisions relating to merger with subsidiary; to change certain provisions relating to merger  
20 with other entities; to change certain provisions relating to election to become limited  
21 liability company; to streamline the process of permitting an entity to convert from one form  
22 into another; to allow entities organized in other states to convert to certain corporations or  
23 partnerships in this state; to change certain provisions relating to sale of assets requiring  
24 shareholder approval; to change certain provisions relating to right to dissent; to change  
25 provisions relating to dissolution by board of directors and shareholders; to change certain  
26 provisions relating to amended certificate of authority; to change certain provisions relating  
27 to corporate name of foreign corporation; to change certain provisions relating to election to  
28 become a limited partnership; to change certain provisions relating to change of name or state

1 of organization; to change certain provisions relating to amended certificate required for  
2 change of name or jurisdiction of organization; to change certain provisions relating to  
3 election to become a limited liability company; to change certain provisions relating to right  
4 to dissent; to provide for related matters; to repeal conflicting laws; and for other purposes.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

6 **SECTION 1.**

7 Title 14 of the Official Code of Georgia Annotated, relating to corporations, partnerships,  
8 and associations, is amended by adding a new Code Section 14-2-104 to the end of Part 1 of  
9 Article 1 of Chapter 2, relating to short title and reservation of power, to read as follows:  
10 "14-2-104.

11 (a) Any corporation, an order for relief with respect to which has been entered pursuant  
12 to the federal Bankruptcy Code (11 U.S.C. Section 101, et seq.), may put into effect and  
13 carry out any decrees and orders of the court or judge in such bankruptcy proceeding and  
14 may take any corporate action provided or directed by such decrees and orders, without  
15 further action by its directors or shareholders. Such power and authority may be exercised,  
16 and such corporate action may be taken, as may be directed by such decrees and orders, by  
17 the trustee or trustees of such corporation appointed or elected in the bankruptcy  
18 proceeding, or a majority thereof, or, if none be appointed or elected and acting, by  
19 designated officers of the corporation, or by a representative appointed by the court or  
20 judge, with like effect as if exercised and taken by unanimous action of the directors and  
21 shareholders of the corporation.

22 (b) Such corporation may, in the manner provided in subsection (a) of this Code section,  
23 but without limiting the generality or effect of the foregoing, alter, amend, or repeal its  
24 bylaws; constitute or reconstitute and classify or reclassify its board of directors, and name,  
25 constitute, or appoint directors and officers in place of or in addition to all or some of the  
26 directors or officers then in office; amend its articles of incorporation, and make any  
27 change in its shares, or any other amendment, change, or alteration, or provision,  
28 authorized by this chapter; be dissolved, transfer all or part of its assets, merge or effect any  
29 share exchange in connection with any action taken under this Code section; change the  
30 location of its registered office, change its registered agent, and remove or appoint any  
31 agent to receive service of process; authorize and fix the terms, manner, and conditions of,  
32 the issuance of bonds, debentures, or other obligations, regardless of whether convertible  
33 into shares of any class or series, or bearing warrants or other evidences of optional rights  
34 to purchase or subscribe for shares of any class or series; or lease its property and  
35 franchises to any corporation, if permitted by law. No shareholder shall have the right to

1 dissent under Article 13 of this chapter with respect to such shareholder's shares in  
2 connection with any action taken under this Code section.

3 (c) Articles or a certificate of any amendment, correction, merger, share exchange, or  
4 dissolution, made by such corporation pursuant to this Code section, shall be filed with the  
5 Secretary of State in accordance with Code Section 14-2-120, and, subject to Code Section  
6 14-2-123 and subsection (c) of Code Section 14-2-124, shall thereupon become effective  
7 in accordance with its terms and the provisions thereof. Such articles, certificate, or other  
8 instrument shall be made, executed, and acknowledged, as may be directed by such decrees  
9 and orders, by the trustee or trustees appointed or elected in the bankruptcy proceeding, or  
10 a majority thereof, or, if none be appointed or elected and acting, by the officers of the  
11 corporation, or by a representative appointed by the court or judge, and shall certify that  
12 provision for the making of such articles, certificate, or instrument is contained in a decree  
13 or order of a court or judge having jurisdiction of a proceeding under the federal  
14 Bankruptcy Code.

15 (d) This Code section shall cease to apply to such corporation upon the entry of a final  
16 decree in the bankruptcy proceeding closing the case and discharging the trustee or  
17 trustees, if any; provided, however, that the closing of a case and discharge of trustee or  
18 trustees, if any, will not affect the validity of any act previously performed pursuant to  
19 subsection (a), (b), or (c) of this Code section.

20 (e) On filing any articles, certificate, report, or other paper made or executed pursuant to  
21 this Code section, there shall be paid to the Secretary of State for the use of the state the  
22 same fees as are payable by corporations not in bankruptcy upon the filing of like articles,  
23 certificates, agreements, reports, or other papers."

## 24 SECTION 2.

25 Said title is further amended by adding a new Code Section 14-2-305 to the end of Article  
26 3 of Chapter 2, relating to purposes and powers of business corporations, to read as follows:  
27 "14-2-305.

28 Subject to the requirements set forth in paragraph (1) of subsection (b) of Code Section  
29 14-2-1003, with respect to the submission of amendments to the articles of incorporation  
30 to shareholders; paragraph (1) of subsection (b) of Code Section 14-2-1103, with respect  
31 to the submission of a plan of merger or share exchange to shareholders; paragraph (1) of  
32 subsection (b) of Code Section 14-2-1202, with respect to the submission of a disposition  
33 of assets requiring shareholder approval to shareholders; and paragraph (1) of subsection  
34 (b) of Code Section 14-2-1402, with respect to the submission of a proposed dissolution  
35 to shareholders, a corporation may agree to submit a matter to a vote of its shareholders  
36 regardless of whether the board of directors determines at any time subsequent to adopting

1 or approving such matter that such matter is no longer advisable and recommends that the  
2 shareholders reject or vote against the matter."

3 **SECTION 3.**

4 Said title is further amended by striking paragraph (2) of subsection (b) of Code Section  
5 14-2-401, relating to corporate name, and inserting in lieu thereof the following:  
6 "(2) A corporate name reserved ~~or registered~~ under Code Section 14-2-402 ~~or 14-2-403~~;"

7 **SECTION 4.**

8 Said title is further amended by striking Code Section 14-2-854, relating to court ordered  
9 indemnification and advances for expenses, and inserting in lieu thereof the following:  
10 "14-2-854.

11 (a) A director who is a party to a proceeding because he or she is a director may apply for  
12 indemnification or advance for expenses to the court conducting the proceeding or to  
13 another court of competent jurisdiction. After receipt of an application and after giving any  
14 notice it considers necessary, the court shall:

15 (1) Order indemnification or advance for expenses if it determines that the director is  
16 entitled to indemnification or advance for expenses under this part; or

17 (2) Order indemnification or advance for expenses if it determines, in view of all the  
18 relevant circumstances, that it is fair and reasonable to indemnify the director or to  
19 advance expenses to the director, even if the director has not met the relevant standard  
20 of conduct set forth in subsections (a) and (b) of Code Section 14-2-851, failed to comply  
21 with Code Section 14-2-853, or was adjudged liable in a proceeding referred to in  
22 paragraph (1) or (2) of subsection (d) of Code Section 14-2-851, but if the director was  
23 adjudged so liable, the indemnification shall be limited to reasonable expenses incurred  
24 in connection with the proceeding.

25 (b) If the court determines that the director is entitled to indemnification or advance for  
26 expenses under this part paragraph (1) of subsection (a) of this Code section, it may shall  
27 also order the corporation to pay the director's reasonable expenses to obtain ~~court-ordered~~  
28 court ordered indemnification or advance for expenses. If the court determines that the  
29 director is entitled to indemnification or advance for expenses under paragraph (2) of  
30 subsection (a) of this Code section, it may also order the corporation to pay the director's  
31 reasonable expenses to obtain court ordered indemnification or advance for expenses.

32 (c) The court may summarily determine, without a jury, a corporation's obligation to  
33 advance expenses."

**SECTION 5.**

1 Said title is further amended by striking Code Section 14-2-859, relating to application of  
2 part, and inserting in lieu thereof the following:

3 "14-2-859.

4 (a) A corporation may, by a provision in its articles of incorporation or bylaws or in a  
5 resolution adopted or a contract approved by its board of directors or shareholders, obligate  
6 itself in advance of the act or omission giving rise to a proceeding to provide  
7 indemnification or advance funds to pay for or reimburse expenses consistent with this  
8 part. Any such obligatory provision shall be deemed to satisfy the requirements for  
9 authorization referred to in subsection (c) of Code Section 14-2-853 or subsection (c) of  
10 Code Section 14-2-855. ~~Any such provision that obligates the corporation to provide  
11 indemnification to the fullest extent permitted by law shall be deemed to obligate the  
12 corporation to advance funds to pay for or reimburse expenses in accordance with Code  
13 Section 14-2-853 to the fullest extent permitted by law, unless the provision specifically  
14 provides otherwise.~~

15 (b) Any provision pursuant to subsection (a) of this Code section shall not obligate the  
16 corporation to indemnify or advance expenses to a director of a predecessor of the  
17 corporation, pertaining to conduct with respect to the predecessor, unless otherwise  
18 specifically provided. Any provision for indemnification or advance for expenses in the  
19 articles of incorporation, bylaws, or a resolution of the board of directors or shareholders,  
20 partners, or, in the case of limited liability companies, members or managers of a  
21 predecessor of the corporation or other entity in a merger or in a contract to which the  
22 predecessor is a party, existing at the time the merger takes effect, shall be governed by  
23 paragraph (3) of subsection (a) of Code Section 14-2-1106.

24 (c) A corporation may, by a provision in its articles of incorporation, limit any of the rights  
25 to indemnification or advance for expenses created by or pursuant to this part.

26 (d) This part ~~does~~ shall not limit a corporation's power to pay or reimburse expenses  
27 incurred by a director or an officer in connection with his or her appearance as a witness  
28 in a proceeding at a time when he or she is not a party.

29 (e) Except as expressly provided in Code Section 14-2-857, this part ~~does~~ shall not limit  
30 a corporation's power to indemnify, advance expenses to, or provide or maintain insurance  
31 on behalf of an employee or agent.

32 (f) Any provision in a corporation's articles of incorporation or bylaws or in a resolution  
33 adopted or contract approved by its board of directors or shareholders that obligates the  
34 corporation to provide indemnification to the fullest extent permitted by law shall, unless  
35 such provision or another provision in the corporation's articles of incorporation or bylaws

or in a resolution adopted or a contract approved by its board of directors or shareholders expressly provides otherwise, be deemed to obligate the corporation:

(1) To advance funds to pay for or reimburse expenses in accordance with Code Section 14-2-853 to the fullest extent permitted by law; and

(2) To indemnify directors to the fullest extent permitted in Code Section 14-2-856, provided that such provision is duly authorized as required in subsection (a) of Code Section 14-2-856, and to indemnify officers to the fullest extent permitted in paragraph (2) of subsection (a) and subsection (b) of Code Section 14-2-857."

## SECTION 6.

10 Said title is further amended by striking paragraph (1) of subsection (b) of Code Section  
11 14-2-1003, relating to amendment by board of directors and shareholders, and inserting in  
12 lieu thereof the following:

13       "(1) The board of directors ~~must recommend the amendment~~ shall also transmit to the  
14 shareholders a recommendation that the shareholders approve the amendment, unless the  
15 board of directors ~~elects~~ makes a determination that, because of a ~~conflict~~ conflicts of  
16 interest or other special circumstances, ~~to make no recommendation~~ and communicates  
17 the basis for its election to the shareholders with the amendment ~~it should either refrain~~  
18 from making such a recommendation or recommend that the shareholders reject or vote  
19 against the amendment, in which case the board of directors shall transmit to the  
20 shareholders the basis for such determination; and"

## SECTION 7.

22 Said title is further amended by striking Code Section 14-2-1008, relating to amendment  
23 pursuant to reorganization, and inserting in lieu thereof the following:

24 "14-2-1008.

25 (a) A corporation's articles of incorporation may be amended without action by the board  
26 of directors or shareholders to carry out a plan of reorganization ordered or decreed by a  
27 court of competent jurisdiction under federal statute if the articles of incorporation after  
28 amendment contain only provisions required or permitted by Code Section 14-2-202.  
29 (b) The individual or individuals designated by the court shall deliver to the Secretary of  
30 State for filing articles of amendment setting forth:

31 (1) The name of the corporation;  
32 (2) The text of each amendment approved by the court;  
33 (3) The date of the court's order or decree approving the articles of amendment;  
34 (4) The title of the reorganization proceeding in which the order or decree was entered;  
35 and

(5) A statement that the court had jurisdiction of the proceeding under federal statute.  
(c) Shareholders of a corporation undergoing reorganization do not have dissenters' rights except as and to the extent provided in the reorganization plan.  
(d) This Code section does not apply after entry of a final decree in the reorganization proceeding even though the court retains jurisdiction of the proceeding for limited purposes unrelated to consummation of the reorganization plan. Reserved."

## SECTION 8.

Said title is further amended by striking Code Section 14-2-1101, relating to merger, and inserting in lieu thereof the following:

"14-2-1101.

(a) One or more corporations may merge into another corporation if the board of directors of each corporation adopts and its shareholders (if required by Code Section 14-2-1103) approve a plan of merger.

(b) The plan of merger must set forth:

(1) The name of each corporation planning to merge and the name of the surviving corporation into which each other corporation plans to merge;  
(2) The terms and conditions of the merger; and  
(3) The manner and basis of converting the shares of each corporation into shares or other securities, obligations, rights to acquire shares or other securities of the surviving or any other corporation or into cash or other property in whole or in part cash, other property, or any combination of the foregoing, and if any shares of any holder of a class or series of shares are to be converted in a manner or basis different from any other holder of shares of such class or series, the manner or basis applicable to each such holder.

(c) The plan of merger may set forth:

(1) Amendments to the articles of incorporation of the surviving corporation; and  
(2) A provision that the plan may be amended prior to the time the merger has become effective, but if shareholders of a corporation that is a party to the merger are required or permitted to vote on the plan, subsequent to approval of the plan by such shareholders the plan may not be amended to change in any respect not expressly authorized by such shareholders in connection with the approval of the plan:

(A) The amount or kind of shares or other securities, obligations, rights to acquire shares or other securities, cash, or other property to be received under the plan by the shareholders of any party to the merger if such change would adversely affect such shareholders;

(B) The articles of incorporation of any corporation that will survive as a result of the merger, except for changes permitted by Code Section 14-2-1002 or changes that would not adversely affect such shareholders; or

(C) Any of the other terms or conditions of the plan if such change would adversely affect such shareholders in any material respect; and

in the event that the plan of merger is amended after articles or a certificate of merger has been filed with the Secretary of State but before the merger has become effective, a certificate of amendment of merger executed on behalf of each party to the merger by an officer or other duly authorized representative shall be delivered to the Secretary of State for filing prior to the effectiveness of the merger; and

**(3) Other provisions relating to the merger.**

(d) Any of the terms of the plan of merger may be made dependent upon facts ascertainable outside of the plan of merger, provided that the manner in which such facts shall operate upon the terms of the merger is clearly and expressly set forth in the plan of merger. As used in this subsection, the term 'facts' includes, but is not limited to, the occurrence of any event, including a determination or action by any person or body, including the corporation."

## SECTION 9.

19 Said title is further amended by striking Code Section 14-2-1102, relating to share exchange,  
20 and inserting in lieu thereof the following:

"14-2-1102.

22 (a) A corporation may acquire all of the outstanding shares of one or more classes or series  
23 of another corporation through a share exchange if the board of directors of each  
24 corporation adopts and its shareholders (if required by Code Section 14-2-1103) approve  
25 the share exchange.

(b) The plan of share exchange must set forth:

27 (1) The name of the corporation whose shares will be acquired and the name of the  
28 acquiring corporation;

(2) The terms and conditions of the share exchange; and

(3) The manner and basis of exchanging the shares to be acquired for shares; or other securities, obligations, rights to acquire shares or other securities, of the acquiring or any other corporation or for cash or other property in whole or in part cash, other property, or any combination of the foregoing, and if any shares of any holder of a class or series of shares are to be exchanged in a manner or basis different from any other holder of shares of such class or series, the manner or basis applicable to each such holder.

(c) The plan of share exchange may set forth other provisions relating to the share exchange, including a provision that the plan may be amended prior to the time the share exchange has become effective, but if shareholders of a corporation that is a party to the share exchange are required or permitted to vote on the plan, subsequent to approval of the plan by such shareholders the plan may not be amended to change in any respect not expressly authorized by such shareholders in connection with the approval of the plan:

(1) The amount or kind of shares or other securities, obligations, rights to acquire shares or other securities, cash, or other property to be issued by the corporation or to be received under the plan by the shareholders of any party to the share exchange if such change would adversely affect such shareholders; or

(2) Any of the other terms or conditions of the plan if such change would adversely affect such shareholders in any material respect; and

in the event that the plan of share exchange is amended after articles or a certificate of share exchange has been filed with the Secretary of State but before the share exchange has become effective, a certificate of amendment of share exchange executed on behalf of each party to the share exchange by an officer or other duly authorized representative shall be delivered to the Secretary of State for filing prior to the effectiveness of the share exchange.

(d) Any of the terms of the plan of share exchange may be made dependent upon facts ascertainable outside of the plan of share exchange, provided that the manner in which such facts shall operate upon the terms of the share exchange is clearly and expressly set forth in the plan of share exchange. As used in this subsection, the term 'facts' includes, but is not limited to, the occurrence of any event, including a determination or action by any person or body, including the corporation.

(e) This Code section does not limit the power of a corporation to acquire all or part of the shares of one or more classes or series of another corporation through a voluntary exchange of shares or otherwise."

## **SECTION 10.**

Said title is further amended by striking paragraph (1) of subsection (b) of Code Section 14-2-1103, relating to action on plan, and inserting in lieu thereof the following:

"(1) The board of directors must recommend the plan of merger or share exchange shall also transmit to the shareholders a recommendation that the shareholders approve the plan, unless the board of directors elects, makes a determination that, because of conflict conflicts of interest or other special circumstances, to make no recommendation and communicates the basis for its election to the shareholders with the plan it should either refrain from making such a recommendation or recommend that the shareholders reject

or vote against the plan, in which case the board of directors shall transmit to the shareholders the basis for such determination; and"

## SECTION 11.

Said title is further amended by striking paragraph (2) of subsection (b) of Code Section 14-2-1104, relating to merger with subsidiary, and inserting in lieu thereof the following:

"(2) The manner and basis of converting the shares of the parent or subsidiary into shares; or other securities, obligations, rights to acquire shares or other securities of the surviving corporation or any other corporation or into cash or other property in whole or in part securities, cash, other property, or any combination thereof, and if any shares of any holder of a class or series of shares are to be converted in a manner or basis different from any other holder of shares of such class or series, the manner or basis applicable to such holder."

## SECTION 12.

Said title is further amended by striking subsection (d) of Code Section 14-2-1109, relating to merger with other entities, and inserting in lieu thereof the following:

**"(d) The plan of merger:**

(1) Must set forth:

(A) The name of each corporation and entity planning to merge and the name of the surviving corporation or entity into which each other corporation and entity plans to merge;

(B) The terms and conditions of the merger; and

(C) The manner and basis of converting the shares of each corporation and the shares, memberships, or financial or beneficial interests or units in each of the entities into shares; ~~or other securities, obligations, rights to acquire shares or other securities, of the surviving or any other corporation or entity or into cash or other property in whole or in part cash, other property, or any combination of the foregoing, and if any shares of any holder of a class or series of shares are to be converted in a manner or basis different from any other holder of shares of such class or series, the manner or basis applicable to each such holder; and~~

(2) May set forth:

(A) Amendments to the articles of incorporation or governing agreements of the surviving corporation or entity; and

(B) A provision that the plan may be amended prior to the time the merger has become effective, but if shareholders of a domestic corporation that is a party to the merger or shareholders, partners, or members of a domestic entity that is a party to the merger are

required or permitted to vote on the plan, subsequent to approval of the plan by such shareholders, partners, or members the plan may not be amended to change in any respect not expressly authorized by such approving shareholders, partners, or members in connection with the approval of the plan:

(i) The amount or kind of shares or other securities, obligations, rights to acquire shares or other securities, cash, or other property to be received under the plan by the shareholders, partners, or members of any party to the merger if such change would adversely affect such approving shareholders, partners, or members;

(ii) The articles or certificate of incorporation of any domestic or foreign corporation, or the governing agreements of any other entity, that will survive or be created as a result of the merger, except for changes permitted by Code Section 14-2-1002 or by comparable provisions of the law of the state or jurisdiction under which any such other entity was organized or changes that would not adversely affect such approving shareholders, partners, or members; or

(iii) Any of the other terms or conditions of the plan if such change would adversely affect such approving shareholders, partners, or members in any material respect; and  
in the event that the plan of merger is amended after articles or a certificate of merger has been filed with the Secretary of State but before the merger has become effective, a certificate of amendment of merger executed on behalf of each party to the merger by an officer or other duly authorized representative shall be delivered to the Secretary of State for filing prior to the effectiveness of the merger; and

**(C) Other provisions relating to the merger."**

## SECTION 13.

Said title is further amended by striking Code Section 14-2-1109.1, relating to election to become a limited liability company, and inserting in lieu thereof the following:

"14-2-1109.1.

(a) As used in this Code section, the term:

(1) 'Limited limited liability company' means any limited liability company formed under Chapter 11 of this title.

(2) 'Limited partnership' means any limited partnership formed under Chapter 9 of this title.

(b) Pursuant to Code Section 14-11-212 or 14-9-206.2 and this Code section, a corporation may elect to become a limited liability company or limited partnership if the board of directors adopts and its shareholders approve a plan of election conversion.

(c) The plan of election conversion must set forth:

- 1       (1) The name of the limited liability company or limited partnership to be formed  
2 pursuant to such election;
- 3       (2) The manner and basis of converting the shares of such corporation into interests as  
4 members of the limited liability company to be formed pursuant to such election or  
5 interests as partners of the limited partnership to be formed pursuant to such election or  
6 a statement that such information is contained in the written operating agreement  
7 proposed for such limited liability company or the written limited partnership agreement  
8 proposed for such limited partnership;
- 9       (3) The effective date and time of such election, if later than the date and time the  
10 certificate of election conversion is filed;
- 11      (4) The contents of the articles of organization that shall be the articles of organization  
12 of the limited liability company to be formed pursuant to such election unless and until  
13 modified in accordance with the provisions of Chapter 11 of this title or the contents of  
14 the certificate of limited partnership that shall be the certificate of limited partnership of  
15 the limited partnership to be formed pursuant to such election unless and until modified  
16 in accordance with the provisions of Chapter 9 of this title; and
- 17       (A) The contents of the written operating agreement to be entered into among the  
18 persons who will be the members of the limited liability company to be formed  
19 pursuant to such election, which shall, if not separately provided in the plan of election,  
20 state:
  - 21       (i) The the manner and basis for the conversion of the shares of such corporation into  
22 interests as members of the limited liability company to be formed pursuant to such  
23 election; and
  - 24       (ii) That that notification that approval of the election will be deemed to be execution  
25 of the operating agreement by such persons; or
- 26       (B) The contents of the written limited partnership agreement to be entered into among  
27 the persons who will be the partners of the limited partnership to be formed pursuant  
28 to such election, which shall, if not separately provided in the plan of conversion, state:
  - 29       (i) The manner and basis for the conversion of the shares of such corporation into  
30 interests as partners of the limited partnership to be formed pursuant to such  
31 conversion; and
  - 32       (ii) That approval of the election will be deemed to be execution of the limited  
33 partnership agreement by such persons.
- 34      (d) For a plan of election conversion to become a limited liability company or limited  
35 partnership to be approved:
  - 36       (1) The board of directors must shall submit the plan of conversion approved by the  
37 shareholders and shall recommend the plan of election conversion to the shareholders in

the same manner and subject to the same exceptions as provided in subsections (a) through (d) paragraph (1) of subsection (b) of the Code Section 14-2-1103, and may condition its submission and provide notice to each shareholder entitled to vote in the same manner as provided in subsections (c) and (d) of Code Section 14-2-1103; and

(2) All of the shareholders must approve the plan of ~~election~~ conversion.

(e) The plan of conversion may set forth other provisions relating to the conversion, including a provision that the plan may be amended prior to the time that the conversion has become effective, but subsequent to approval of the plan by shareholders the plan may not be amended to change in any respect not expressly authorized by such shareholders in connection with the approval of the plan:

(1) The amount or kind of interests, shares or other securities, obligations, or rights to acquire interests, shares or other securities to be received under the plan by the shareholders if the change would adversely affect such shareholders; or

(2) Any of the other terms or conditions of the plan if the change would adversely affect such shareholders in any material respect; and

in the event that the plan of conversion is amended after a certificate of conversion has been filed with the Secretary of State but before the conversion has become effective, a certificate of amendment of conversion executed by an officer or other duly authorized representative shall be delivered to the Secretary of State for filing prior to the effectiveness of the conversion.

(f) Any of the terms of the plan of conversion may be made dependent upon facts ascertainable outside of the plan of conversion, provided that the manner in which such facts shall operate upon the terms of the conversion is clearly and expressly set forth in the plan of conversion. As used in this subsection, the term 'facts' includes, but is not limited to, the occurrence of any event, including a determination or action by any person or body, including the corporation.

(g) After a conversion is authorized, unless the plan of conversion provides otherwise, and at any time before the conversion has become effective, the planned conversion may be abandoned, subject to any contractual rights, without further shareholder action, in accordance with the procedure set forth in the plan of conversion or, if none is set forth, in the manner determined by the board of directors.

(e)(h) After a plan of ~~election~~ conversion is approved by the shareholders, the corporation shall deliver to the Secretary of State for filing a certificate of ~~election~~ conversion complying with subsection (b) of Code Section 14-11-212 or subsection (b) of Code Section 14-9-206.2, as applicable."

**SECTION 14.**

2 Said title is further amended by adding two new Code sections to the end of Part 1 of Article  
3 11 of Chapter 2, relating to merger and share exchange, to read as follows:

4 "14-2-1109.2.

5 (a) A foreign corporation, domestic limited partnership, foreign limited partnership,  
6 domestic general partnership, foreign general partnership, domestic limited liability  
7 company, or foreign limited liability company may elect to become a corporation. Such  
8 election shall require the approval of all of the electing entity's partners, members, or  
9 shareholders, or such other approval or compliance as may be sufficient under applicable  
10 law or the governing documents of the electing entity to authorize such election.

11 (b) Such election shall be made by delivering a certificate of conversion to the Secretary  
12 of State for filing. The certificate shall set forth:

13 (1) The name and jurisdiction of organization of the entity making the election;  
14 (2) That the entity elects to become a corporation;  
15 (3) The effective date, or the effective date and time, of such conversion if later than the  
16 date and time the certificate of conversion is filed;  
17 (4) That the election has been approved as required by subsection (a) of this Code  
18 section;

19 (5) That filed with the certificate of conversion are articles of incorporation that are in  
20 the form required by Code Section 14-2-202, setting forth a name for the corporation that  
21 satisfies the requirements of Code Section 14-2-401, and stating that such articles of  
22 incorporation shall be the articles of incorporation of the corporation formed pursuant to  
23 such election unless and until modified in accordance with this chapter; and

24 (6) If not provided for in the articles of incorporation required by paragraph (5) of this  
25 subsection, a statement setting forth the manner and basis for converting the ownership  
26 interests in the entity making the election into shares of the corporation formed pursuant  
27 to such election.

28 (c) Upon the election becoming effective:

29 (1) The electing entity shall become a corporation formed under this chapter by such  
30 election, except that the existence of the corporation so formed shall be deemed to have  
31 commenced on the date the entity making the election commenced its existence in the  
32 jurisdiction in which such entity was first created, formed, incorporated, or otherwise  
33 came into being;

34 (2) The ownership interests in the entity making the conversion shall be converted on the  
35 basis stated or referred to in the certificate of conversion in accordance with paragraph  
36 (6) of subsection (b) of this Code section;

1       (3) The articles of incorporation filed with the certificate of conversion shall be the  
2       articles of incorporation of the corporation formed pursuant to such election unless and  
3       until amended in accordance with this chapter;

4       (4) The governing documents of the entity making the election shall be of no further  
5       force or effect;

6       (5) The corporation formed by such election shall thereupon and thereafter possess all  
7       of the rights, privileges, immunities, franchises, and powers of the entity making the  
8       election; all property, real, personal, and mixed, all contract rights, and all debts due to  
9       such entity, as well as all other choses in action, and each and every other interest of or  
10      belonging to or due to the entity making the election shall be taken and deemed to be  
11      vested in the corporation formed by such election without further act or deed; the title to  
12      any real estate, or any interest therein, vested in the entity making the election shall not  
13      revert or be in any way impaired by reason of such election; and none of such items shall  
14      be deemed to have been conveyed, transferred, or assigned by reason of such election for  
15      any purpose; and

16      (6) The corporation formed by such election shall thereupon and thereafter be  
17      responsible and liable for all the liabilities and obligations of the entity making the  
18      election, and any claim existing or action or proceeding pending by or against such entity  
19      may be prosecuted as if such election had not become effective. Neither the rights of  
20      creditors nor any liens upon the property of the entity making such election shall be  
21      impaired by such election.

22      (d) A conversion pursuant to this Code section shall not be deemed to constitute a  
23      dissolution of the entity making the election and shall constitute a continuation of the  
24      existence of the entity making the election in the form of a corporation. A corporation  
25      formed by an election pursuant to this Code section shall for all purposes be deemed to be  
26      the same entity as the entity making such election.

27      (e) A corporation formed by an election pursuant to this Code section may file a copy of  
28      such certificate of conversion, certified by the Secretary of State, in the office of the clerk  
29      of the superior court of the county where any real property owned by such corporation is  
30      located and record such certified copy of the certificate of conversion in the books kept by  
31      such clerk for recordation of deeds in such county with the entity electing to become a  
32      corporation indexed as the grantor and the corporation indexed as the grantee. No real  
33      estate transfer tax under Code Section 48-6-1 shall be due with respect to the recordation  
34      of such election.

35      (f) The Secretary of State shall be authorized to promulgate such rules and charge such  
36      filing fees as are necessary to carry out the purpose of this Code section.

1 14-2-1109.3.

2 (a) A corporation may elect to become a foreign limited liability company, a foreign  
3 limited partnership, or a foreign corporation, if such a conversion is permitted by the law  
4 of the state or jurisdiction under whose law the resulting entity would be formed.

5 (b) To effect a conversion under this Code section, the corporation must adopt a plan of  
6 conversion that sets forth the manner and basis of converting the shares of the corporation  
7 into interests, shares, obligations, or other securities, as the case may be, of the resulting  
8 entity. The plan of conversion may set forth other provisions relating to the conversion.

9 (c) For the plan of conversion to be adopted:

10 (1) The board of directors shall submit the plan of conversion for approval by the  
11 shareholders and shall recommend the plan of conversion to the shareholders in the same  
12 manner and subject to the same exceptions as provided in paragraph (1) of subsection (b)  
13 of Code Section 14-2-1103, and may condition its submission and provide notice to each  
14 shareholder entitled to vote in the same manner as provided in subsections (c) and (d) of  
15 Code Section 14-2-1103; and

16 (2) All of the shareholders must approve the plan of conversion.

17 (d) The plan of conversion may set forth other provisions relating to the conversion,  
18 including a provision that the plan may be amended prior to the time that the conversion  
19 has become effective, but subsequent to approval of the plan by shareholders the plan may  
20 not be amended to change in any respect not expressly authorized by such shareholders in  
21 connection with the approval of the plan:

22 (1) The amount or kind of interests, shares or other securities, obligations, or rights to  
23 acquire interests, shares or other securities to be received under the plan by the  
24 shareholders if the change would adversely affect such shareholders; or

25 (2) Any of the other terms or conditions of the plan if the change would adversely affect  
26 such shareholders in any material respect; and

27 in the event that the plan of conversion is amended after a certificate of conversion has  
28 been filed with the Secretary of State but before the conversion has become effective, a  
29 certificate of amendment of conversion executed by an officer or other duly authorized  
30 representative shall be delivered to the Secretary of State for filing prior to the  
31 effectiveness of the conversion.

32 (e) Any of the terms of the plan of conversion may be made dependent upon facts  
33 ascertainable outside of the plan of conversion, provided that the manner in which such  
34 facts shall operate upon the terms of the conversion is clearly and expressly set forth in the  
35 plan of conversion. As used in this subsection, the term 'facts' includes, but is not limited  
36 to, the occurrence of any event, including a determination or action by any person or body,  
37 including the corporation.

(f) After a conversion is authorized, unless the plan of conversion provides otherwise, and at any time before the conversion has become effective, the planned conversion may be abandoned, subject to any contractual rights, without further shareholder action, in accordance with the procedure set forth in the plan of conversion or, if none is set forth, in the manner determined by the board of directors.

(g) The conversion shall be effected as provided in, and shall have the effects provided by, the law of the state or jurisdiction under whose law the resulting entity is formed and by the plan of conversion, to the extent not inconsistent with such law.

(h) If the resulting entity is required to obtain a certificate of authority to transact business in this state by the provisions of this title governing foreign corporations, foreign limited partnerships, or foreign limited liability companies, it shall do so."

## SECTION 15.

Said title is further amended by striking paragraph (1) of subsection (b) of Code Section 14-2-1202, relating to sale of assets requiring shareholder approval, and inserting in lieu thereof the following:

"(1) The board of directors must recommend the proposed transaction shall also transmit to the shareholders a recommendation that the shareholders approve the proposed disposition, unless the board of directors elects, makes a determination that, because of conflict conflicts of interest or other special circumstances, to make no recommendation and communicates the basis for its election to the shareholders with the submission of the proposed transaction it should either refrain from making such a recommendation or recommend that the shareholders reject or vote against the plan, in which case the board of directors shall transmit to the shareholders the basis for such determination; and"

## SECTION 16.

Said title is further amended by striking subsection (c) of Code Section 14-2-1302, relating to right to dissent, and inserting in lieu thereof the following:

"(c) Notwithstanding any other provision of this article, there shall be no right of dissent in favor of the holder of shares of any class or series which, at the record date fixed to determine the shareholders entitled to receive notice of and to vote at a meeting at which a plan of merger or share exchange or a sale or exchange of property or an amendment of the articles of incorporation is to be acted on, were either listed on a national securities exchange or held of record by more than 2,000 shareholders, unless:

(1) In the case of a plan of merger or share exchange, the any holders of shares of the class or series are required under the plan of merger or share exchange to accept for their shares:

(A) Anything anything except shares of the surviving corporation or another publicly held corporation which at the effective date of the merger or share exchange are either listed on a national securities exchange or held of record by more than 2,000 shareholders, except for scrip or cash payments in lieu of fractional shares; or

(B) Any shares of the surviving corporation or another publicly held corporation which at the effective date of the merger or share exchange are either listed on a national securities exchange or held of record by more than 2,000 shareholders that are different, in type or exchange ratio per share, from the shares to be provided or offered to any other holder of shares of the same class or series of shares in exchange for such shares; or

(2) The articles of incorporation or a resolution of the board of directors approving the transaction provides otherwise."

## SECTION 17.

Said title is further amended by striking subsection (b) of Code Section 14-2-1402, relating to dissolution by board of directors and shareholders, and inserting in lieu thereof the following:

"(1) The board of directors ~~must recommend dissolution~~ shall also transmit to the shareholders a recommendation that the shareholders approve the proposed dissolution, unless the board of directors ~~elects, makes the recommendation that because of a conflict conflicts~~ of interest or other special circumstances, ~~to make no recommendation and communicates the basis for its determination to the shareholders it should either refrain from making such a recommendation or recommend that the shareholders reject or vote against dissolution, in which case the board of directors shall transmit to the shareholders the basis for such determination; and"~~

## SECTION 18.

Said title is further amended by striking Code Section 14-2-1504, relating to amended certificate of authority, and inserting in lieu thereof the following:

"14-2-1504.

(a) A foreign corporation authorized to transact business in this state must obtain an amended certificate of authority from the Secretary of State if it changes:

(1) Its corporate name;

(2) The period of its duration; or

(3) The state or country of its incorporation.

(b) The requirements of Code Section 14-2-1503 for obtaining an original certificate of authority apply to obtaining an amended certificate under this Code section.

1    (c) If a foreign corporation authorized to transact business in this state converts into a  
2    foreign limited liability company:

3    (1) The foreign corporation shall notify the Secretary of State that such conversion has  
4    occurred no later than the otherwise applicable due date of its next annual registration  
5    with the Secretary of State, using such form as the Secretary of State shall specify, which  
6    form may require such information and statements as may be required to be submitted by  
7    a foreign limited liability company that applies for a certificate of authority to transact  
8    business in this state; and

9    (2) If such notice is timely given:

10    (A) The authorization of such entity to transact business in this state shall continue  
11    without interruption; and

12    (B) The certificate of authority issued to such foreign corporation under this article  
13    shall constitute a certificate of authority issued under Code Section 14-11-704 to the  
14    foreign limited liability company resulting from the conversion effective as of the date  
15    of the conversion.

16    The Secretary of State shall adjust its records accordingly.

17    (d) If a foreign corporation authorized to transact business in this state converts into a  
18    foreign limited partnership:

19    (1) The foreign corporation shall notify the Secretary of State that such conversion has  
20    occurred no later than the otherwise applicable due date of its next annual registration  
21    with the Secretary of State, using such form as the Secretary of State shall specify, which  
22    form may require such information and statements as may be required to be submitted by  
23    a foreign limited partnership that applies for a certificate of authority to transact business  
24    in this state; and

25    (2) If such notice is timely given:

26    (A) The authorization of such entity to transact business in this state shall continue  
27    without interruption; and

28    (B) The certificate of authority issued to such foreign corporation under this part shall  
29    constitute a certificate of authority issued under Code Section 14-9-903 to the foreign  
30    limited partnership resulting from the conversion effective as of the date of the  
31    conversion.

32    The Secretary of State shall adjust its records accordingly."

**SECTION 19.**

Said title is further amended by striking paragraph (2) of subsection (b) of Code Section 14-2-1506, relating to corporate name of a foreign corporation, and inserting in lieu thereof the following:

"(2) A corporate name reserved or registered under Code Section 14-2-402 or 14-2-403;"

**SECTION 20.**

Said title is further amended by striking Code Section 14-9-206.2, relating to election to become a limited partnership, and inserting in lieu thereof the following:

"14-9-206.2.

(a) A corporation, foreign corporation, limited liability company, foreign limited liability company, foreign limited partnership, general partnership, or foreign general partnership may elect to become a limited partnership. Such election shall require:

(1) Compliance with Code Section 14-2-1109.1 in the case of a Georgia corporation; or

(2) Approval of all of its partners, members, or shareholders, or such other approval as may be sufficient under applicable law or the governing documents of the electing entity to authorize such election, in the case of a foreign corporation, limited liability company, foreign limited liability company, foreign limited partnership, general partnership, or foreign general partnership; or

(3) The approval of all of its partners, or such other approval as may be sufficient under applicable law to authorize such election, in the case of a general partnership.

(b) Such election is made by delivery of a certificate of election conversion to the Secretary of State for filing. The certificate shall set forth:

(1) The name of the corporation, limited liability company, or general partnership and jurisdiction of organization of the entity making the election;

(2) That the corporation, limited liability company, or general partnership entity elects to become a limited partnership;

(3) The effective date and time of such election if later than the date and time the certificate of election conversion is filed;

(4) That the election has been approved as required by subsection (a) of this Code section;

(5) That filed with the certificate of election conversion is a certificate of limited partnership that is in the form required by Code Section 14-9-201, that sets forth a name for the limited partnership that satisfies the requirements of Code Section 14-9-102, and that shall be the certificate of limited partnership of the limited partnership formed pursuant to such election unless and until modified in accordance with this chapter; and

(6) A statement that states setting forth either:

1       (A) The manner and basis for converting the ~~shares of the corporation, the membership~~  
2       ~~interests of the members of the limited liability company, or the interests of the partners~~  
3       ~~in the general partnership~~ ownership interests in the entity making the election into  
4       interests as ~~members~~ partners of the limited partnership formed pursuant to such  
5       election; or

6       (B)(i) That a written limited partnership agreement has been entered into among the  
7       persons who will be the ~~members~~ partners of the limited partnership formed pursuant  
8       to such election;

9       (ii) That such limited partnership agreement will be effective immediately upon the  
10      effectiveness of such election; and

11      (iii) That such limited partnership agreement provides for the manner and basis of  
12      such conversion.

13      (c) Upon the election becoming effective the:

14       (1) ~~Corporation, limited liability company, or general partnership~~ Electing entity shall  
15       become a limited partnership formed under this chapter by such election except that the  
16       existence of the limited partnership so formed shall be deemed to have commenced on  
17       the date the entity making the election commenced its existence in the jurisdiction in  
18       which such entity was first created, formed, incorporated, or otherwise came into being;

19       (2) Ownership Shares of the corporation, interests in the ~~limited liability company, or the~~  
20       ~~interests of the partners of the general partnership~~ entity making the election shall be  
21       converted on the basis stated or referred to in the certificate of conversion in  
22       accordance with paragraph (6) of subsection (b) of this Code section;

23       (3) Certificate of limited partnership filed with the certificate of conversion shall  
24       be the certificate of limited partnership of the limited partnership formed pursuant to such  
25       election unless and until amended in accordance with this chapter;

26       (4) Governing documents of the entity ~~Articles of incorporation and bylaws of the~~  
27       ~~corporation, articles of organization and operating agreement of the limited liability~~  
28       ~~company, or partnership agreement and statement of partnership, if any, of the general~~  
29       ~~partnership~~ making the election shall be of no further force or effect;

30       (5) Limited partnership formed by such election shall thereupon and thereafter possess  
31       all of the rights, privileges, immunities, franchises, and powers of the ~~corporation, limited~~  
32       ~~liability company, or general partnership~~ entity making the election; and all property,  
33       real, personal, and mixed, all contract rights, and all debts due to such ~~corporation,~~  
34       ~~limited liability company, or general partnership~~ entity, as well as all other choses in  
35       action, and each and every other interest of, belonging to, or due to the ~~corporation,~~  
36       ~~limited liability company, or general partnership~~ entity making the election shall be taken  
37       and deemed to be vested in the limited partnership formed by such election without

1 further act or deed; and the title to any real estate, or any interest in real estate, vested in  
2 the corporation, limited liability company, or general partnership entity making the  
3 election shall not revert or be in any way impaired by reason of such election; and none  
4 of such items shall be deemed to have been conveyed, transferred, or assigned by reason  
5 of such election for any purpose; and

6 (6) Limited partnership formed by such election shall thereupon and thereafter be  
7 responsible and liable for all the liabilities and obligations of the corporation, limited  
8 liability company, or general partnership entity making the election, and any claim  
9 existing or action or proceeding pending by or against such corporation, limited liability  
10 company, or general partnership entity may be prosecuted as if such election had not  
11 become effective. Neither the rights of creditors nor any liens upon the property of the  
12 corporation, limited liability company, or general partnership entity making such election  
13 shall be impaired by such election.

14 (d) A conversion pursuant to this Code section shall not be deemed to constitute a  
15 dissolution of the entity making the election and shall constitute a continuation of the  
16 existence of the entity making the election in the form of a limited partnership. A limited  
17 partnership formed by an election pursuant to this Code section shall for all purposes be  
18 deemed to be the same entity as the entity making such election.

19 (e) A limited partnership formed by the foregoing election pursuant to this Code section  
20 may file a copy of the foregoing election to become a limited partnership such certificate  
21 of conversion, certified by the Secretary of State, in the office of the clerk of the superior  
22 court of the county where any real property owned by such limited partnership is located  
23 and record such certified copy of the election certificate of conversion in the books kept  
24 by such clerk for recordation of deeds in such county with the entity electing to become a  
25 limited partnership indexed as the grantor and the limited partnership indexed as the  
26 grantee. No real estate transfer tax under Code Section 48-6-1 shall be due with respect  
27 to the recordation of such election.

28 (e)(f) The Secretary of State shall be authorized to promulgate such rules and charge such  
29 filing fees as are necessary to carry out the purpose of this Code section."

30 **SECTION 21.**

31 Said title is further amended by adding a new Code Section 14-9-206.8 to the end of Article  
32 2 of Chapter 9, relating to formation, amendment, cancellation, and merger, to read as  
33 follows:

1 "14-9-206.8.

2 (a) A limited partnership may elect to become a foreign limited liability company, a  
3 foreign limited partnership, or a foreign corporation, if such a conversion is permitted by  
4 the law of the state or jurisdiction under whose law the resulting entity would be formed.

5 (b) To effect a conversion under this Code section, the limited partnership must adopt a  
6 plan of conversion that sets forth the manner and basis of converting the interests of the  
7 partners of the limited partnership into interests, shares, obligations, or other securities, as  
8 the case may be, of the resulting entity. The plan of conversion may set forth other  
9 provisions relating to the conversion.

10 (c) The limited partnership shall have the plan of conversion authorized and approved by  
11 the unanimous consent of the partners, unless the limited partnership agreement of such  
12 limited partnership provides otherwise.

13 (d) After a conversion is authorized, unless the plan of conversion provides otherwise, and  
14 at any time before the conversion has become effective, the planned conversion may be  
15 abandoned, subject to any contractual rights, in accordance with the procedure set forth in  
16 the plan of conversion or, if none is set forth, by the unanimous consent of the partners of  
17 the limited partnership, unless the limited partnership agreement of such limited  
18 partnership provides otherwise.

19 (e) The conversion shall be effected as provided in, and shall have the effects provided by,  
20 the law of the state or jurisdiction under whose law the resulting entity is formed and by  
21 the plan of conversion, to the extent not inconsistent with such law.

22 (f) If the resulting entity is required to obtain a certificate of authority to transact business  
23 in this state by the provisions of this title governing foreign corporations, foreign limited  
24 partnerships, or foreign limited liability companies, it shall do so."

## 25 SECTION 22.

26 Said title is further amended by striking Code Section 14-9-905, relating to change of name  
27 or state of an organization, and inserting in lieu thereof the following:

28 "14-9-905.

29 (a) A foreign limited partnership authorized to transact business in this state must obtain  
30 an amended certificate of authority from the Secretary of State if it changes its name or its  
31 state of organization. The requirements of Code Sections 14-9-902 and 14-9-903 for  
32 obtaining an original certificate of authority shall apply to obtaining an amended certificate  
33 under this Code section.

34 (b) If a foreign limited partnership authorized to transact business in this state converts into  
35 a foreign limited liability company:

(1) The foreign limited partnership shall notify the Secretary of State that such conversion has occurred no later than the otherwise applicable due date of its next annual registration with the Secretary of State, using such form as the Secretary of State shall specify, which form may require such information and statements as may be required to be submitted by a foreign limited liability company that applies for a certificate of authority to transact business in this state; and

(2) If such notice is timely given:

(A) The authorization of such entity to transact business in this state shall continue without interruption; and

(B) The certificate of authority issued to such foreign limited partnership under this article shall constitute a certificate of authority issued under Code Section 14-11-704 to the foreign limited liability company resulting from the conversion effective as of the date of the conversion.

The Secretary of State shall adjust its records accordingly.

(c) If a foreign limited partnership authorized to transact business in this state converts into a foreign corporation:

(1) The foreign limited partnership shall notify the Secretary of State that such conversion has occurred no later than the otherwise applicable due date of its next annual registration with the Secretary of State, using such form as the Secretary of State shall specify, which form may require such information and statements as may be required to be submitted by a foreign corporation that applies for a certificate of authority to transact business in this state; and

**(2) If such notice is timely given:**

(A) The authorization of such entity to transact business in this state shall continue without interruption; and

(B) The certificate of authority issued to such foreign limited partnership under this article shall constitute a certificate of authority issued under Code Sections 14-2-1501 and 14-2-1503 to the foreign corporation resulting from the conversion effective as of the date of the conversion.

The Secretary of State shall adjust its records accordingly."

## SECTION 23.

Said title is further amended by striking Code Section 14-11-212, relating to election to become a limited liability company, and inserting in lieu thereof the following:

(a) A corpo

partnership, foreign limited partnership, general partnership, or foreign general partnership

1 may elect to become a limited liability company. Such election shall require (1)  
2 compliance with Code Section 14-2-1109.1 in the case of a Georgia corporation, or (2) the  
3 approval of all of its partners, members or shareholders (or such other approval or  
4 compliance as may be sufficient under applicable law or the governing documents of the  
5 electing entity to authorize such election) in the case of a foreign corporation, foreign  
6 limited liability company, limited partnership, or foreign limited partnership, or foreign  
7 general partnership.

8 (b) Such election is made by delivering a certificate of election conversion to the Secretary  
9 of State for filing. The certificate shall set forth:

- 10 (1) The name of the corporation, limited partnership, or general partnership and  
11 jurisdiction of organization of the entity making the election;
- 12 (2) That the corporation, limited partnership, or general partnership entity elects to  
13 become a limited liability company;
- 14 (3) The effective date, or the effective date and time, of such election if later than the  
15 date and time the certificate of election conversion is filed;
- 16 (4) That the election has been approved as required by subsection (a) of this Code  
17 section;
- 18 (5) That filed with the certificate of election conversion are articles of organization that  
19 are in the form required by Code Section 14-11-204, that set forth a name for the limited  
20 liability company that satisfies the requirements of Code Section 14-11-207, and that  
21 shall be the articles of organization of the limited liability company formed pursuant to  
22 such election unless and until modified in accordance with this chapter; and
- 23 (6) A statement that setting forth either (A) states the manner and basis for converting  
24 the shares of the corporation or the interests of the partners in the limited partnership or  
25 general partnership ownership interests in the entity making the election into interests as  
26 members of the limited liability company formed pursuant to such election, or (B) states  
27 (i) that a written operating agreement has been entered into among the persons who will  
28 be the members of the limited liability company formed pursuant to such election, (ii)  
29 that such operating agreement will be effective immediately upon the effectiveness of  
30 such election, and (iii) that such operating agreement provides for the manner and basis  
31 of such conversion.

32 (c) Upon the election becoming effective:

- 33 (1) The corporation, limited partnership, or general partnership electing entity shall  
34 become a limited liability company formed under this chapter by such election except  
35 that the existence of the limited liability company so formed shall be deemed to have  
36 commenced on the date the entity making the election commenced its existence in the

1       jurisdiction in which such entity was first created, formed, incorporated, or otherwise  
2       came into being;

3       (2) The ~~shares of the corporation or the interests of the partners of the limited partnership~~  
4       ~~or general partnership ownership interests in the entity~~ making the election shall be  
5       converted on the basis stated or referred to in the certificate of ~~election conversion~~ in  
6       accordance with paragraph (6) of subsection (b) of this Code section;

7       (3) The articles of organization filed with the certificate of ~~election conversion~~ shall be  
8       the articles of organization of the limited liability company formed pursuant to such  
9       election unless and until amended in accordance with this chapter;

10      (4) The ~~articles of incorporation and bylaws of the corporation, certificate of limited~~  
11      ~~partnership and partnership agreement of the limited partnership, or partnership~~  
12      ~~agreement and statement of partnership, if any, of the general partnership governing~~  
13      ~~documents of the entity~~ making the election shall be of no further force or effect;

14      (5) The limited liability company formed by such election shall thereupon and thereafter  
15      possess all of the rights, privileges, immunities, franchises, and powers of the  
16      corporation, ~~limited partnership, or general partnership entity~~ making the election; and  
17      all property, real, personal, and mixed, all contract rights, and all debts due to such  
18      corporation, ~~limited partnership, or general partnership entity~~, as well as all other choses  
19      in action, and each and every other interest of or belonging to or due to the ~~corporation,~~  
20      ~~limited partnership, or general partnership entity making the election~~ shall be taken and  
21      deemed to be vested in the limited liability company formed by such election without  
22      further act or deed; and the title to any real estate, or any interest therein, vested in the  
23      corporation, ~~limited partnership, or general partnership entity making the election~~ shall  
24      not revert or be in any way impaired by reason of such election; and none of such items  
25      shall be deemed to have been conveyed, transferred, or assigned by reason of such  
26      election for any purpose; and

27      (6) The limited liability company formed by such election shall thereupon and thereafter  
28      be responsible and liable for all the liabilities and obligations of the ~~corporation, limited~~  
29      ~~partnership, or general partnership entity~~ making the election, and any claim existing or  
30      action or proceeding pending by or against such ~~corporation, limited partnership, or~~  
31      ~~general partnership entity~~ may be prosecuted as if such election had not become effective.  
32      Neither the rights of creditors nor any liens upon the property of the ~~corporation, limited~~  
33      ~~partnership, or general partnership entity making such election~~ shall be impaired by such  
34      election.

35      (d) A conversion pursuant to this Code section shall not be deemed to constitute a  
36      dissolution of the entity making the election and shall constitute a continuation of the  
37      existence of the entity making the election in the form of a limited liability company. A

limited liability company formed by an election pursuant to this Code section shall for all purposes be deemed to be the same entity as the entity making such election.

(e) A limited liability company formed by an election pursuant to this Code section may file a copy of such ~~election to become a limited liability company~~ certificate of conversion, certified by the Secretary of State, in the office of the clerk of the superior court of the county where any real property owned by such limited liability company is located and record such certified copy of the ~~election~~ certificate of conversion in the books kept by such clerk for recordation of deeds in such county with the entity electing to become a limited liability company indexed as the grantor and the limited liability company indexed as the grantee. No real estate transfer tax under Code Section 48-6-1 shall be due with respect to recordation of such election."

## SECTION 24.

13 Said title is further amended by striking Code Section 14-11-706, relating to amended  
14 certificate required for change of name or jurisdiction of organization, and inserting in lieu  
15 thereof the following:

16 "14-11-706.

17       (a) A foreign limited liability company authorized to transact business in this state must  
18       procure an amended certificate of authority from the Secretary of State if it changes its  
19       name or its jurisdiction of organization. The requirements of Code Sections 14-11-702 and  
20       14-11-704 for procuring an original certificate of authority shall apply to procuring an  
21       amended certificate under this Code section.

22       (b) If a foreign limited liability company authorized to transact business in this state  
23 converts into a foreign limited partnership:

24       (1) The foreign limited liability company shall notify the Secretary of State that such  
25 conversion has occurred no later than the otherwise applicable due date of its next annual  
26 registration with the Secretary of State, using such form as the Secretary of State shall  
27 specify, which form may require such information and statements as may be required to  
28 be submitted by a foreign limited partnership that applies for a certificate of authority to  
29 transact business in this state; and

30        (2) If such notice is timely given:

31       (A) The authorization of such entity to transact business in this state shall continue  
32       without interruption; and

33       (B) The certificate of authority issued to such foreign limited liability company under  
34       this article shall constitute a certificate of authority issued under Code Section  
35       14-11-903 to the foreign limited partnership resulting from the conversion effective as  
36       of the date of the conversion.

The Secretary of State shall adjust its records accordingly.

(c) If a foreign limited liability company authorized to transact business in this state converts into a foreign corporation:

(1) The foreign limited liability company shall notify the Secretary of State that such conversion has occurred no later than the otherwise applicable due date of its next annual registration with the Secretary of State, using such form as the Secretary of State shall specify, which form may require such information and statements as may be required to be submitted by a foreign corporation that applies for a certificate of authority to transact business in this state; and

**(2) If such notice is timely given:**

(A) The authorization of such entity to transact business in this state shall continue without interruption; and

(B) The certificate of authority issued to such foreign limited liability company under this article shall constitute a certificate of authority issued under Code Section 14-2-1501 to the foreign corporation resulting from the conversion effective as of the date of the conversion.

The Secretary of State shall adjust its records accordingly."

## **SECTION 25.**

19 Said title is further amended by adding a new Code Section 14-11-906 to the end of Article  
20 9 of Chapter 11, relating to merger, to read as follows:

"14-11-906.

22 (a) A limited liability company may elect to become a foreign limited liability company,  
23 a foreign limited partnership, or a foreign corporation, if such a conversion is permitted by  
24 the law of the state or jurisdiction under whose law the resulting entity would be formed.

25 (b) To effect a conversion under this Code section, the limited liability company must  
26 adopt a plan of conversion that sets forth the manner and basis of converting the interests  
27 of the members of the limited liability company into interests, shares, obligations, or other  
28 securities, as the case may be, of the resulting entity. The plan of conversion may set forth  
29 other provisions relating to the conversion.

30 (c) The limited liability company shall have the plan of conversion authorized and  
31 approved by the unanimous consent of the members, unless the articles of organization or  
32 a written operating agreement of such limited liability company provides otherwise.

33 (d) After a conversion is authorized, unless the plan of conversion provides otherwise, and  
34 at any time before the conversion has become effective, the planned conversion may be  
35 abandoned, subject to any contractual rights, in accordance with the procedure set forth in  
36 the plan of conversion or, if none is set forth, by the unanimous consent of the members

1 of the limited liability company, unless the articles of organization or a written operating  
2 agreement of such limited liability company provides otherwise.

3 (e) The conversion shall be effected as provided in, and shall have the effects provided by,  
4 the law of the state or jurisdiction under whose law the resulting entity is formed and by  
5 the plan of conversion, to the extent not inconsistent with such law.

6 (f) If the resulting entity is required to obtain a certificate of authority to transact business  
7 in this state by the provisions of this title governing foreign corporations, foreign limited  
8 partnerships, or foreign limited liability companies, it shall do so."

9 **SECTION 26.**

10 Said title is further amended by striking subsection (a) of Code Section 14-11-1002, relating  
11 to right to dissent, and inserting in lieu thereof the following:

12 "(a) Unless otherwise provided by the articles of organization or a written operating  
13 agreement, a record member of the limited liability company is entitled to dissent from, and  
14 obtain payment of the fair value of his or her membership interest in the event of, any of  
15 the following actions:

16 (1) Consummation of a plan of merger to which the limited liability company is a party  
17 if approval of less than all of the members of the limited liability company is required for  
18 the merger by the articles of organization or a written operating agreement and the  
19 member is entitled to vote on the merger;

20 (2) Consummation of a plan of conversion pursuant to Code Section 14-2-1109.2 or  
21 14-11-906;

22 (3) Consummation of a sale, lease, exchange, or other disposition of all or substantially  
23 all of the property of the limited liability company if approval of less than all of the  
24 members is required by the articles of organization or a written operating agreement and  
25 the member is entitled to vote on the sale, lease, exchange, or other disposition, but not  
26 including a sale pursuant to court order or a sale for cash pursuant to a plan by which all  
27 or substantially all of the net proceeds of the sale will be distributed to the members  
28 within one year after the date of sale;

29 (3)(4) An amendment of the articles of organization that materially and adversely affects  
30 rights in respect of a dissenter's membership interest in the limited liability company  
31 because it:

- 32 (A) Alters or abolishes a preferential right of the member's interest;  
33 (B) Creates, alters, or abolishes a right in respect of redemption, including a provision  
34 respecting a sinking fund for the redemption or repurchase, of the membership interest;  
35 (C) Alters or abolishes a preemptive right of the holder of the membership interest to  
36 acquire additional interest or other securities;

- 1       (D) Excludes or limits the right of the member to vote on any matter, other than a  
2 limitation by dilution through additional member contributions or other securities with  
3 similar voting rights; or  
4       (E) Cancels, redeems, or repurchases all or part of the membership interest of the class;  
5 or  
6       (4)(5) Any limited liability company action taken pursuant to a member vote to the  
7 extent that the articles of organization or a written operating agreement provides that  
8 voting or nonvoting members are entitled to dissent and obtain payment for their  
9 membership interests."

10

**SECTION 27.**

11 All laws and parts of laws in conflict with this Act are repealed.