

Senate Bill 148

By: Senators Kennedy of the 18th, Jeffares of the 17th, Cowsert of the 46th, Albers of the 56th, Tillery of the 19th and others

A BILL TO BE ENTITLED  
AN ACT

1 To amend Chapter 3 of Title 14 of the Official Code of Georgia Annotated, relating to  
2 nonprofit corporations, so as to allow for a nonprofit corporation organized in a foreign  
3 jurisdiction to change its jurisdiction of organization to this state; to allow for a nonprofit  
4 corporation organized in this state to change its jurisdiction of organization to a foreign  
5 jurisdiction; to provide for a definition; to provide for related matters; to repeal conflicting  
6 laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Chapter 3 of Title 14 of the Official Code of Georgia Annotated, relating to nonprofit  
10 corporations, is amended by adding a new article to read as follows:

11 "ARTICLE 11A

12 14-3-1120.

13 (a) By complying with this Code section, a foreign corporation may become a corporation  
14 if the law of the foreign jurisdiction authorizes domestication, redomestication,  
15 reincorporation, conversion, or a similar statutory procedure to become a corporation.

16 (b) To become a corporation, a foreign corporation shall elect to become a corporation.  
17 Such election shall require such approval as may be sufficient under applicable law or the  
18 governing documents of the electing foreign corporation to authorize such election.

19 (c) The election provided for under subsection (b) of this Code section shall be made by  
20 delivering to the Secretary of State for filing a certificate of conversion and accompanying  
21 articles of incorporation that comply with Code Section 14-3-202. Such certificate shall  
22 set forth:

23 (1) The name and jurisdiction of the converting foreign corporation; provided, however,  
24 that the name of the converting foreign corporation shall meet the requirements of Code

25 Section 14-3-401, including, but not limited to, situations when the name of the  
26 converting foreign corporation is unavailable for use in Georgia or the converting foreign  
27 corporation desires to change its name in connection with the conversion;  
28 (2) A statement that the converting foreign corporation elects to become a corporation;  
29 (3) If later than the date and time the certificate of conversion is filed, the effective date,  
30 or the effective date and time, of the conversion;  
31 (4) A statement that the election has been approved as required by subsection (b) of this  
32 Code section; and  
33 (5) A statement that the articles of incorporation accompanying the certificate:  
34 (A) Are in the form required by Code Section 14-3-202;  
35 (B) Set forth the name of the corporation that satisfies the requirements of Code  
36 Section 14-3-401; and  
37 (C) Are the articles of incorporation of the corporation formed pursuant to such  
38 election unless and until modified in accordance with this chapter.  
39 (d) Upon the conversion provided for in this Code section becoming effective:  
40 (1) The converting foreign corporation shall become a corporation formed under this  
41 chapter, provided that the existence of the corporation so formed shall be deemed to have  
42 commenced on the date the converting foreign corporation commenced its existence in  
43 the jurisdiction in which such foreign corporation was first created, formed, or  
44 incorporated or otherwise came into being;  
45 (2) The articles of incorporation filed with the certificate of conversion shall be the  
46 articles of incorporation of the corporation formed pursuant to such conversion unless and  
47 until amended in accordance with this chapter;  
48 (3) The governing documents of the converting foreign corporation shall be of no further  
49 force or effect;  
50 (4) The resulting corporation formed by such conversion shall retain all of the rights,  
51 privileges, immunities, franchises, and powers of the converting foreign corporation; all  
52 property, real, personal, and mixed; all contract rights; and all debts due to such  
53 converting foreign corporation, as well as all other choses in action; and each and every  
54 other interest of or belonging to or due to the converting foreign corporation shall be  
55 taken and deemed to be vested in the resulting corporation without further act or deed.  
56 The title to any real estate, or any interest therein, vested in the converting foreign  
57 corporation shall not revert or be in any way impaired, and none of such items shall be  
58 deemed to have been conveyed, transferred, or assigned for any purpose; and  
59 (5) The resulting corporation shall thereupon and thereafter be responsible and liable for  
60 all the liabilities and obligations of the converting foreign corporation. Any claim  
61 existing or action or proceeding pending by or against such converting foreign

62 corporation may be prosecuted as if such conversion had not become effective, and  
63 neither the rights of creditors nor any liens upon the property of the converting foreign  
64 corporation shall be impaired.

65 (e) A conversion pursuant to this Code section shall not be deemed to constitute a  
66 dissolution of the converting foreign corporation and shall constitute a continuation of the  
67 existence of the converting foreign corporation in the form of a corporation. A corporation  
68 formed by a conversion pursuant to this Code section shall for all purposes be deemed to  
69 be the same entity as the converting foreign corporation.

70 (f) A corporation formed pursuant to this Code section shall file a copy of its certificate  
71 of conversion, certified by the Secretary of State, in the office of the clerk of the superior  
72 court of the county where any real property owned by such corporation is located and  
73 record such certified copy of the certificate of conversion in the books kept by such clerk  
74 for recordation of deeds in such county with the converting foreign corporation indexed as  
75 the grantor and the resulting corporation indexed as the grantee. No real estate transfer tax  
76 under Code Section 48-6-1 shall be due with respect to the recordation of such certificate  
77 of conversion.

78 14-3-1121.

79 (a) By complying with this Code section, a corporation may become a foreign corporation  
80 if the law of the foreign jurisdiction authorizes domestication, redomestication,  
81 reincorporation, conversion, or a similar statutory procedure to become a foreign  
82 corporation.

83 (b) To become a foreign corporation, a corporation shall convert to a foreign corporation,  
84 and to effect such conversion, the corporation shall adopt and file with the Secretary of  
85 State a certificate of conversion as required by subsection (n) of this Code section.

86 (c) To be adopted by a corporation, the certificate of conversion provided for in subsection  
87 (b) of this Code section must be approved:

88 (1) By the board;

89 (2) By the members, if any, but only if and to the extent that members are entitled to vote  
90 on the conversion under the corporation's articles or bylaws, except as provided for under  
91 subsection (h) of this Code section; and

92 (3) In writing by any person or persons whose approval is required by a provision of the  
93 articles authorized by Code Section 14-3-1030 for an amendment to the articles or  
94 bylaws.

95 (d) If the corporation does not have members or if the members are not entitled to vote on  
96 the conversion, then, unless otherwise provided for in the corporation's articles or bylaws,  
97 the certificate of conversion shall be approved by a majority of the directors in office at the

98 time the certificate of conversion is adopted. The corporation shall provide notice as  
99 provided for in subsection (b) of Code Section 14-3-822 of any directors' meeting at which  
100 adoption of the certificate of conversion will be considered. Such notice shall also state  
101 that the purpose, or one of the purposes, of such meeting is for consideration of the  
102 adoption of the certificate of conversion.

103 (e) The board may condition its adoption of the certificate of conversion, and the members  
104 may condition their approval of the adoption of the certificate of conversion, on the receipt  
105 of a higher percentage of affirmative votes or on any other basis.

106 (f) If the corporation is required or seeks to have adoption of the certificate of conversion  
107 approved by the members at a membership meeting, the corporation shall give notice to its  
108 members of the membership meeting in accordance with Code Section 14-3-705. Such  
109 notice shall state that the purpose, or one of the purposes, of the meeting is to consider the  
110 adoption of the certificate of conversion pursuant to which the corporation will convert into  
111 a foreign corporation and shall contain or be accompanied by a copy of the certificate of  
112 conversion. Such notice shall conspicuously identify any adverse change to the rights of  
113 members that would result from the conversion, including, but not limited to, any adverse  
114 change to the rights of members under the law of the foreign jurisdiction applicable to the  
115 proposed foreign corporation. Such notice shall also include a copy or summary of the  
116 articles of incorporation, bylaws, and any other similar governing documents of the  
117 proposed foreign corporation that will become effective upon the conversion.

118 (g) If the certificate of conversion may be approved by the members by written consent  
119 or written ballot, including consent or ballot by electronic transmission, any material  
120 soliciting such approval shall contain or be accompanied by a copy of the certificate of  
121 conversion. Such material shall conspicuously identify any adverse change to the rights  
122 of members that would result from the conversion, including, but not limited to, any  
123 adverse change to the rights of members under the law of the foreign jurisdiction applicable  
124 to the proposed foreign corporation. Such material shall also include a copy or summary  
125 of the articles of incorporation, bylaws, and any other similar governing documents of the  
126 proposed foreign corporation that will become effective upon the conversion.

127 (h) Voting by members or classes of members is required to approve the adoption of a  
128 certificate of conversion if the conversion will implement any provision that, if contained  
129 in a proposed amendment to the articles of incorporation or bylaws of the corporation,  
130 would entitle the members or classes of members to vote on such proposed amendment  
131 under Code Sections 14-3-1003, 14-3-1004, 14-3-1021, or 14-3-1022. In such  
132 circumstances, the corporation shall comply with subsection (f) or (g) of this Code section,  
133 as applicable, with respect to the members or classes of members entitled to vote.  
134 Furthermore, the certificate of conversion may be adopted if it is approved by the members

135 or classes of members entitled to vote in the same manner as would be required to approve  
136 such proposed amendment or, if the articles or bylaws do not specify how the members or  
137 classes of members vote to approve such proposed amendment, by two-thirds of the votes  
138 cast or a majority of the voting power, whichever is less.

139 (i) A corporation described in paragraph (2) of subsection (a) of Code Section 14-3-1302  
140 must give written notice to the Attorney General, including a copy of the proposed  
141 certificate of conversion and a copy or summary of the articles of incorporation and  
142 bylaws, or similar governing documents, of the proposed foreign corporation that will  
143 become effective upon the conversion at least 30 days before the certificate of conversion  
144 is filed in accordance with subsection (n) of this Code section.

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

151 (k) After a certificate of conversion has been adopted, unless the certificate of conversion  
152 provides otherwise, and at any time before the conversion has become effective, the  
153 conversion may be abandoned, subject to any contractual rights, in accordance with the  
154 procedure set forth in the certificate of conversion or, if none is set forth, in the manner  
155 determined by the board of directors.

156 (l) The conversion shall be effected as provided in, and shall have the effects provided by,  
157 the law of the state or jurisdiction under whose law the resulting foreign corporation is  
158 formed and, to the extent not inconsistent with such law, by the terms of the certificate of  
159 conversion.

160 (m) If the resulting foreign corporation is required to obtain a certificate of authority to  
161 transact business in this state by the provisions of this title governing foreign corporations,  
162 such resulting foreign corporation shall do so pursuant to Code Section 14-3-1501.

163 (n) After a certificate of conversion is adopted in accordance with this Code section, unless  
164 the conversion subsequently is abandoned, the corporation shall deliver to the Secretary of  
165 State for filing the certificate of conversion which shall set forth:

166 (1) The name of the corporation;

167 (2) The name and jurisdiction of the proposed foreign corporation to which the  
168 corporation shall be converted;

169 (3) A statement that the certificate of conversion has been adopted as required by  
170 subsection (c) of this Code section;

171 (4) A statement that the authority of the corporation's registered agent to accept service  
172 on its behalf is revoked as of the effective date of such conversion and that the Secretary  
173 of State is irrevocably appointed as the agent for service of process on the resulting  
174 foreign corporation in any proceeding to enforce an obligation of the resulting foreign  
175 corporation arising prior to the effective date of such conversion;

176 (5) A mailing address to which a copy of any process served on the Secretary of State  
177 under paragraph (4) of this subsection may be mailed as provided in subsection (o) of this  
178 Code section; and

179 (6) A statement that the Secretary of State shall be notified of any change in the resulting  
180 foreign corporation's mailing address.

181 (o) Upon the conversion becoming effective, the resulting foreign corporation is deemed  
182 to appoint the Secretary of State as its agent for service of process in any proceeding to  
183 enforce any of its obligations arising prior to the effective date of such conversion. Any  
184 party that serves process upon the Secretary of State in accordance with this subsection  
185 shall also mail a copy of the process to the chief executive officer, chief financial officer,  
186 or secretary of the resulting foreign corporation, or a person holding a comparable position,  
187 at the mailing address provided pursuant to paragraph (5) of subsection (n) of this Code  
188 section.

189 (p) A converting corporation provided for in this Code section shall file a copy of its  
190 certificate of conversion, certified by the Secretary of State, in the office of the clerk of the  
191 superior court of the county where any real property owned by such converting corporation  
192 is located and record such certified copy of the certificate of conversion in the books kept  
193 by such clerk for recordation of deeds in such county with the converting corporation  
194 indexed as the grantor and the resulting foreign corporation indexed as the grantee. No real  
195 estate transfer tax otherwise required by Code Section 48-6-1 shall be due with respect to  
196 the recordation of such certificate of conversion.

197 (q) Upon the conversion provided for in this Code section becoming effective:

198 (1) The resulting foreign corporation shall retain all of the rights, privileges, immunities,  
199 franchises, and powers of the converting corporation;

200 (2) All property, real, personal, and mixed, all contract rights, and all debts due to such  
201 converting corporation, as well as all other choses in action, and each and every other  
202 interest of or belonging to or due to the converting corporation shall be taken and deemed  
203 to be vested in the resulting foreign corporation without further act or deed;

204 (3) Title to any real estate, or any interest therein, vested in the converting corporation  
205 shall not revert or be in any way impaired by reason of the conversion;

206 (4) None of the items described in paragraphs (1) through (3) of this subsection shall be  
207 deemed to have been conveyed, transferred, or assigned by reason of the conversion for  
208 any purpose; and  
209 (5) The resulting foreign corporation shall thereupon and thereafter be responsible and  
210 liable for all the liabilities and obligations of the converting corporation. Any claim  
211 existing or action or proceeding pending by or against such converting corporation may  
212 be prosecuted as if such conversion had not become effective, and neither the rights of  
213 creditors nor any liens upon the property of the converting corporation shall be impaired  
214 by such conversion."

215 **SECTION 2.**

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