

House Bill 87 (AS PASSED HOUSE AND SENATE)

By: Representatives Raffensperger of the 50th, Williamson of the 115th, Welch of the 110th, Golick of the 40th, Petrea of the 166th, and others

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 multiple-year registrations and changes
3 in jurisdiction of organization for certain types of business organizations; to provide for the
4 adoption of rules and regulations by the Secretary of State as necessary to implement a
5 multiple-year registration process; to allow for a nonprofit corporation organized in a foreign
6 jurisdiction to change its jurisdiction of organization to this state; to allow for a nonprofit
7 corporation organized in this state to change its jurisdiction of organization to a foreign
8 jurisdiction; to provide for a definition; to provide for related matters; to repeal conflicting
9 laws; and for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

PART I

SECTION 1-1.

13 Title 14 of the Official Code of Georgia Annotated, relating to corporations, partnerships,
14 and associations, is amended by adding a new Code section to read as follows:

15 "14-2-121.1.

16 Notwithstanding any other law to the contrary, the Secretary of State may provide for the
17 annual registration required under this chapter to be valid for a period up to and including
18 three years. The Secretary of State is authorized to adopt the necessary rules and
19 regulations to implement such a registration process."

SECTION 1-2.

21 Said title is further amended by adding a new Code section to read as follows:

22 "14-3-120.1.

23 Notwithstanding any other law to the contrary, the Secretary of State may provide for the
24 annual registration required under this chapter to be valid for a period up to and including

25 three years. The Secretary of State is authorized to adopt the necessary rules and
26 regulations to implement such a registration process."

27 **SECTION 1-3.**

28 Said title is further amended by adding a new Code section to read as follows:

29 "14-4-180.1

30 Notwithstanding any other law to the contrary, the Secretary of State may provide for the
31 annual registration required under Code Section 14-4-180 to be valid for a period up to and
32 including three years. The Secretary of State is authorized to adopt the necessary rules and
33 regulations to implement such a registration process."

34 **SECTION 1-4.**

35 Said title is further amended by adding a new Code section to read as follows:

36 "14-5-11.1.

37 Notwithstanding any other law to the contrary, the Secretary of State may provide for the
38 annual registration required under Code Section 14-5-11 to be valid for a period up to and
39 including three years. The Secretary of State is authorized to adopt the necessary rules and
40 regulations to implement such a registration process."

41 **SECTION 1-5.**

42 Said title is further amended by adding a new Code section to read as follows:

43 "14-8-56.1.

44 Notwithstanding any other law to the contrary, the Secretary of State may provide for the
45 annual registration required under this chapter to be valid for a period up to and including
46 three years. The Secretary of State is authorized to adopt the necessary rules and
47 regulations to implement such a registration process."

48 **SECTION 1-6.**

49 Said title is further amended by adding a new Code section to read as follows:

50 "14-9-206.9.

51 Notwithstanding any other law to the contrary, the Secretary of State may provide for the
52 annual registration required under this chapter to be valid for a period up to and including
53 three years. The Secretary of State is authorized to adopt the necessary rules and
54 regulations to implement such a registration process."

55 **SECTION 1-7.**

56 Said title is further amended by adding a new Code section to read as follows:

57 "14-11-1103.1.
 58 Notwithstanding any other law to the contrary, the Secretary of State may provide for the
 59 annual registration required under this chapter to be valid for a period up to and including
 60 three years. The Secretary of State is authorized to adopt the necessary rules and
 61 regulations to implement such a registration process."

62 PART II

63 SECTION 2-1.

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

66 "ARTICLE 11A

67 14-3-1120.

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

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

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

78 (1) The name and jurisdiction of the converting foreign corporation; provided, however,
 79 that the name of the converting foreign corporation shall meet the requirements of Code
 80 Section 14-3-401, including, but not limited to, situations when the name of the
 81 converting foreign corporation is unavailable for use in Georgia or the converting foreign
 82 corporation desires to change its name in connection with the conversion;

83 (2) A statement that the converting foreign corporation elects to become a corporation;

84 (3) If later than the date and time the certificate of conversion is filed, the effective date,
 85 or the effective date and time, of the conversion;

86 (4) A statement that the election has been approved as required by subsection (b) of this
 87 Code section; and

88 (5) A statement that the articles of incorporation accompanying the certificate:

89 (A) Are in the form required by Code Section 14-3-202;

- 90 (B) Set forth the name of the corporation that satisfies the requirements of Code
91 Section 14-3-401; and
- 92 (C) Are the articles of incorporation of the corporation formed pursuant to such
93 election unless and until modified in accordance with this chapter.
- 94 (d) Upon the conversion provided for in this Code section becoming effective:
- 95 (1) The converting foreign corporation shall become a corporation formed under this
96 chapter, provided that the existence of the corporation so formed shall be deemed to have
97 commenced on the date the converting foreign corporation commenced its existence in
98 the jurisdiction in which such foreign corporation was first created, formed, or
99 incorporated or otherwise came into being;
- 100 (2) The articles of incorporation filed with the certificate of conversion shall be the
101 articles of incorporation of the corporation formed pursuant to such conversion unless and
102 until amended in accordance with this chapter;
- 103 (3) The governing documents of the converting foreign corporation shall be of no further
104 force or effect;
- 105 (4) The resulting corporation formed by such conversion shall retain all of the rights,
106 privileges, immunities, franchises, and powers of the converting foreign corporation; all
107 property, real, personal, and mixed; all contract rights; and all debts due to such
108 converting foreign corporation, as well as all other choses in action; and each and every
109 other interest of or belonging to or due to the converting foreign corporation shall be
110 taken and deemed to be vested in the resulting corporation without further act or deed.
111 The title to any real estate, or any interest therein, vested in the converting foreign
112 corporation shall not revert or be in any way impaired, and none of such items shall be
113 deemed to have been conveyed, transferred, or assigned for any purpose; and
- 114 (5) The resulting corporation shall thereupon and thereafter be responsible and liable for
115 all the liabilities and obligations of the converting foreign corporation. Any claim
116 existing or action or proceeding pending by or against such converting foreign
117 corporation may be prosecuted as if such conversion had not become effective, and
118 neither the rights of creditors nor any liens upon the property of the converting foreign
119 corporation shall be impaired.
- 120 (e) A conversion pursuant to this Code section shall not be deemed to constitute a
121 dissolution of the converting foreign corporation and shall constitute a continuation of the
122 existence of the converting foreign corporation in the form of a corporation. A corporation
123 formed by a conversion pursuant to this Code section shall for all purposes be deemed to
124 be the same entity as the converting foreign corporation.
- 125 (f) A corporation formed pursuant to this Code section shall file a copy of its certificate
126 of conversion, certified by the Secretary of State, in the office of the clerk of the superior

127 court of the county where any real property owned by such corporation is located and
128 record such certified copy of the certificate of conversion in the books kept by such clerk
129 for recordation of deeds in such county with the converting foreign corporation indexed as
130 the grantor and the resulting corporation indexed as the grantee. No real estate transfer tax
131 under Code Section 48-6-1 shall be due with respect to the recordation of such certificate
132 of conversion.

133 14-3-1121.

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

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

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

143 (1) By the board;

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

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

150 (d) If the corporation does not have members or if the members are not entitled to vote on
151 the conversion, then, unless otherwise provided for in the corporation's articles or bylaws,
152 the certificate of conversion shall be approved by a majority of the directors in office at the
153 time the certificate of conversion is adopted. The corporation shall provide notice as
154 provided for in subsection (b) of Code Section 14-3-822 of any directors' meeting at which
155 adoption of the certificate of conversion will be considered. Such notice shall also state
156 that the purpose, or one of the purposes, of such meeting is for consideration of the
157 adoption of the certificate of conversion.

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

161 (f) If the corporation is required or seeks to have adoption of the certificate of conversion
162 approved by the members at a membership meeting, the corporation shall give notice to its

163 members of the membership meeting in accordance with Code Section 14-3-705. Such
164 notice shall state that the purpose, or one of the purposes, of the meeting is to consider the
165 adoption of the certificate of conversion pursuant to which the corporation will convert into
166 a foreign corporation and shall contain or be accompanied by a copy of the certificate of
167 conversion. Such notice shall conspicuously identify any adverse change to the rights of
168 members that would result from the conversion, including, but not limited to, any adverse
169 change to the rights of members under the law of the foreign jurisdiction applicable to the
170 proposed foreign corporation. Such notice shall also include a copy or summary of the
171 articles of incorporation, bylaws, and any other similar governing documents of the
172 proposed foreign corporation that will become effective upon the conversion.

173 (g) If the certificate of conversion may be approved by the members by written consent
174 or written ballot, including consent or ballot by electronic transmission, any material
175 soliciting such approval shall contain or be accompanied by a copy of the certificate of
176 conversion. Such material shall conspicuously identify any adverse change to the rights
177 of members that would result from the conversion, including, but not limited to, any
178 adverse change to the rights of members under the law of the foreign jurisdiction applicable
179 to the proposed foreign corporation. Such material shall also include a copy or summary
180 of the articles of incorporation, bylaws, and any other similar governing documents of the
181 proposed foreign corporation that will become effective upon the conversion.

182 (h) Voting by members or classes of members is required to approve the adoption of a
183 certificate of conversion if the conversion will implement any provision that, if contained
184 in a proposed amendment to the articles of incorporation or bylaws of the corporation,
185 would entitle the members or classes of members to vote on such proposed amendment
186 under Code Sections 14-3-1003, 14-3-1004, 14-3-1021, or 14-3-1022. In such
187 circumstances, the corporation shall comply with subsection (f) or (g) of this Code section,
188 as applicable, with respect to the members or classes of members entitled to vote.
189 Furthermore, the certificate of conversion may be adopted if it is approved by the members
190 or classes of members entitled to vote in the same manner as would be required to approve
191 such proposed amendment or, if the articles or bylaws do not specify how the members or
192 classes of members vote to approve such proposed amendment, by two-thirds of the votes
193 cast or a majority of the voting power, whichever is less.

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

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

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

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

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

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

221 (1) The name of the corporation;

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

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

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

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

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

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

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

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

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

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

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

261 (4) None of the items described in paragraphs (1) through (3) of this subsection shall be
262 deemed to have been conveyed, transferred, or assigned by reason of the conversion for
263 any purpose; and

264 (5) The resulting foreign corporation shall thereupon and thereafter be responsible and
265 liable for all the liabilities and obligations of the converting corporation. Any claim
266 existing or action or proceeding pending by or against such converting corporation may
267 be prosecuted as if such conversion had not become effective, and neither the rights of
268 creditors nor any liens upon the property of the converting corporation shall be impaired
269 by such conversion."

270

PART III

271

SECTION 3-1.

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