

HB 1068 Hoghouse Amendment

-Insert New Section at beginning of original bill

Hoghouse Section 1. “This chapter shall be known and may be cited as the South Dakota Revised Model Nonprofit Corporations Act.”

-In Original Section 12 (Hoghouse Section 13)-delete definition for “conspicuous”

-In Original Section 13. (Hoghouse Section 14) change section to read:

“(a) Notice under this Act must be in the form of a record unless oral notice is authorized by this Act or is reasonable under the circumstances.

(b) Notice may be communicated in person or by delivery. If these forms of communication are impracticable, notice may be communicated by a newspaper of general circulation in the area where published, or by radio, television, or other form of public broadcast communication.

(c) Notice by a corporation to a director, member of a designated body, or member shall be given to the mailing or electronic address of the person shown in the records of the corporation or as provided in subdivision (e)(1) or (e)

(d) Notice to a domestic or qualified foreign nonprofit corporation may be delivered to its registered agent at its registered office or to the corporation or its secretary at its principal office shown in its most recent annual report or, in the case of a foreign corporation that has not yet delivered an annual report, in its application for a certificate of authority.

(e) Notice is effective at the earliest of the following:

- (1) When received;
- (2) When left at the recipient's residence or usual place of business;
- (3) Five days after its deposit in the United States mail or with a commercial delivery service, if the postage or delivery charge is paid and the notice is correctly addressed;
- (4) On the date shown on the return receipt, if sent by registered or certified mail, return receipt requested, or by commercial delivery service.

(f) Oral notice is effective when communicated, if communicated in a comprehensible manner.

(g) If this Act prescribes notice requirements for particular circumstances, those requirements govern. If bylaws prescribe notice requirements, not inconsistent with this section or other provisions of this Act, those requirements govern.

(h) With respect to electronic communications:

- (1) Unless otherwise provided in the articles of incorporation or bylaws, or otherwise agreed between the sender and the recipient, an electronic communication is received when:
 - (i) It enters an information processing system that the recipient has designated or uses for the purpose of receiving electronic records or information of the type sent and from which the recipient is able to retrieve the electronic record; and
 - (ii) It is in a form capable of being processed by that system.
- (2) An electronic communication is received under subdivision (h)(1) even if no individual is aware of its receipt.
- (3) Receipt of an electronic acknowledgement from an information processing system described in subdivision (h)(1) establishes that a record was received but, by itself, does not establish that the content sent corresponds to the content received.”

-Insert New Section after original Section 22 to read:

Hoghouse Section 24. “ Each nonprofit corporation authorized to conduct activities in this state must continuously maintain in this state:

- (1) A registered office that may be the same as any of its places of business; and
- (2) A registered agent pursuant to chapter 59-11.”

-Insert New Section after Original Section 80 to read:

Hoghouse Section 83. “The board of directors shall hold a meeting annually at a time stated in or fixed in accordance with the articles of incorporation or bylaws.”

-Insert new section after Original Section 94 to read:

Hoghouse Section 98. “The directors, officers, committee members, and employees of the corporation shall not, as such, be liable on its obligations.”

-Insert 4 New sections after Original Section 123 to read:

Hoghouse Section 128. “A domestic business corporation may become a domestic nonprofit corporation pursuant to a plan of nonprofit conversion only if incorporating pursuant to this Act is not prohibited in another statute of this state. If the law of a domestic business corporation entity does not provide procedures for the approval of either an entity conversion or a merger, a plan of entity conversion must be adopted and approved, and the entity conversion effectuated in accordance with this Act.”

Hoghouse Section 129. “(a) The plan of nonprofit conversion must be adopted by the shareholders. The plan for nonprofit conversion must include:

- (1) The terms and conditions of the conversion;
- (2) The manner and basis of reclassifying the shareholders in the corporation;
- (3) Any desired amendments to the articles of incorporation or bylaws of the corporation following its conversion;
- (4) The plan for nonprofit conversion may also include a provision that the plan may be amended prior to filing articles of nonprofit conversion;
- (5) The articles of incorporation as they will be in effect immediately following the conversion; or
- (6) Any of the terms or conditions of the plan if the change would adversely affect any of the shareholders in any material respect.

(b) After the plan for nonprofit conversion is authorized, the articles of conversion must be signed on behalf of the converting corporation by any officer or other duly authorized representative. The articles shall set forth:

- (1) The name of the corporation immediately before the filing of the articles of conversion and, if that name is unavailable for use in this state or the corporation desires to change its name in connection with the conversion, a name that satisfies the requirements of section 32 of this Act;
- (2) The jurisdiction of incorporation of the corporation immediately before the filing of the articles of conversion and the date the corporation was incorporated; and
- (3) A statement that the conversion of the corporation in this state was duly authorized as required by the laws of this state.

(c) The articles of conversion shall either contain all of the provisions that section 22(a) of this Act requires to be set forth in articles of incorporation and any other desired provisions that sections 22(b) and 22(c) of this Act permits to be included in articles of incorporation, or shall have attached articles of incorporation. In either case, provisions that would not be required to be included in restated articles of incorporation may be omitted, except that the name and address of the initial registered agent of the domestic business corporation must be included.

(d) The articles of conversion must be delivered to the Office of the Secretary of State for filing, and take effect at the effective time provided pursuant to section 5 of this Act.”

Hoghouse Section 130. “(a) When a conversion of a domestic business corporation to a domestic nonprofit corporation becomes effective:

- (1) The title to all real and personal property, both tangible and intangible, of the corporation remains in the corporation without reversion or impairment;
- (2) The liabilities of the corporation remain the liabilities of the corporation;
- (3) An action or proceeding pending against the corporation continues against the corporation as if the conversion had not occurred;
- (4) The articles of conversion, or the articles of incorporation attached to the articles of conversion, constitute the articles of incorporation of the corporation;
- (5) Memberships, securities, obligations, rights to acquire memberships or securities of the corporation, or cash or other property shall be issued or paid as provided pursuant to the laws of this state; and
- (6) The corporation is deemed to:
 - (i) Be a domestic nonprofit corporation for all purposes; and
 - (ii) Be the same corporation without interruption.

(b) The interest holder liability of a shareholder of the domestic business corporation who becomes a member of the domestic nonprofit corporation in the conversion is as follows:

- (1) The conversion does not discharge any interest holder liability under the laws of this state to the extent any such interest holder liability arose before the effective time of the articles of conversion;
- (2) The member does not have interest holder liability under the laws of this state for any debt, obligation, or liability of the corporation that arises after the effective time of the articles of conversion;
- (3) The provisions of the laws of this state continue to apply to the collection or discharge of any interest holder liability preserved by subdivision (1), as if the conversion had not occurred;
- (4) The member has whatever rights of contribution from other members are provided by the laws of this state with respect to any interest holder liability preserved by subdivision (1), as if the conversion had not occurred.

(c) A shareholder of a domestic business corporation who becomes subject to interest holder liability for some or all of the debts, obligations, or liabilities of the corporation as a result of its conversion in this state has interest holder liability only for those debts, obligations, or liabilities of the corporation that arise after the effective time of the articles of conversion.”

Hoghouse Section 131. “If the conversion of a domestic business corporation to a domestic nonprofit corporation is abandoned in accordance with the laws of this state after articles of conversion have been filed with the Office of the Secretary of State, a statement that the conversion has been abandoned, signed by an officer or other duly authorized representative, must be delivered to the Office of the Secretary of State for filing. The statement takes effect upon filing and the conversion is abandoned and does not become effective.”

-Insert New section after Original Section 199 to read:

Hoghouse Section 208. “Any domestic nonprofit corporation authorized to engage in business in this state shall file a report pursuant to §§ 59-11-24 to 59-11-26, inclusive.”

-Replace language in Original Section 208 with:

Hoghouse Section 217.

- (a) This Act governs only a nonprofit corporation organized:
 - (1) After July 1, 2016;
 - (2) Before July 1, 2016, which elects, as provided by paragraph (b), to be governed by this Act.
- (b) A nonprofit corporation existing before July 1, 2016 may voluntarily elect, in the manner provided in its bylaws or by law for amending the bylaws, to be governed by this Act.

Delete Original Section 213 from the Hoghouse.

Repealing chapters 47-22 to 47-28.