

Regular Session, 2012

SENATE BILL NO. 746 (Substitute of Senate Bill No. 547 by Senator Peacock)

BY SENATOR PEACOCK

LIMIT LIABILITY COMPANY. Provides relative to the manner of converting the state of organization of domestic and foreign limited liability companies. (1/1/13)

1 AN ACT

2 To enact R.S. 12:1308.3, relative to limited liability companies; to provide for the manner
3 of converting the state of organization of domestic and foreign limited liability
4 companies; to provide certain terms, conditions, procedures, requirements, and
5 effects; to provide for the content and requirements for certain certificates; and to
6 provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 12:1308.3 is hereby enacted to read as follows:

9 **§1308.3. Conversion of state of organization**

10 **A. Unless prohibited by the laws of the other state, a domestic limited**
11 **liability company may convert its state of organization from this state to any**
12 **other state, and a foreign limited liability company may convert its state of**
13 **organization from any other state to this state.**

14 **B. Such conversion may be made by a limited liability company only**
15 **pursuant to this Section and only after authorization by a majority of the**
16 **members, or by such larger vote as the articles of organization or an operating**
17 **agreement may require.**

1 **C. The domestic or foreign limited liability company seeking conversion**
2 **shall file with the Louisiana Secretary of State a written request for conversion**
3 **of the state of organization. Such request shall contain all of the following:**

4 **(1) The name of the limited liability company, which shall comply with**
5 **the provisions of R.S. 12:1306.**

6 **(2) The full name and municipal address of either each current manager**
7 **of the limited liability company, if management of the limited liability company**
8 **is vested in one or more managers, or of each of the current members, if**
9 **management of the limited liability company is reserved to the members.**

10 **(3) A statement as appropriate that the limited liability company is**
11 **converting its state of organization from another named state to this state and**
12 **is continuing its existence in and under the laws of this state, or is converting its**
13 **state of organization from this state to another named state and is continuing**
14 **its existence in and under the laws of such other named state.**

15 **(4) A statement that a majority of the members, or such larger vote as**
16 **the articles of organization or the operating agreement may require, has**
17 **approved the conversion of the state of organization.**

18 **(5) The manner and basis of converting the interests of the members of**
19 **the limited liability company into the interests of the members in the converted**
20 **limited liability company.**

21 **(6) A statement that the limited liability company in changing its state**
22 **of organization has complied with the laws and requirements of both the prior**
23 **and new state of organization.**

24 **(7) Any other provision, attachment, or exhibit, not inconsistent with**
25 **law, that the members elect to set forth or include in the certificate of**
26 **conversion.**

27 **(8) If the limited liability company is converting its state of organization**
28 **from another state to this state:**

29 **(a) the location and municipal street address, if any, of the limited**

1 liability company's registered office. An address consisting of a post office box
2 alone is insufficient.

3 (b) the location and municipal street address, if any, of each of the
4 limited liability company's registered agents together with a notarized affidavit
5 of acknowledgment and acceptance signed by each such agent. An address
6 consisting of a post office box alone is insufficient.

7 D. The request for conversion may be delivered to the secretary of state
8 for filing as of any specified date, and, if specified upon such delivery, as of any
9 given time on such date, within thirty days after the date of delivery.

10 E. If the secretary of state finds that the request for conversion is in
11 compliance with the provisions of this Section, and after all fees have been paid
12 as required by law, the secretary of state shall record in his office the request
13 for conversion and any attachments or exhibits thereto, after endorsing thereon
14 the date and, if requested, the hour of filing. Thereafter, the secretary of state
15 shall either issue to the limited liability company a certificate of conversion,
16 reciting that such limited liability company has complied with the requirements
17 of this state for converting its state of organization, or advise the limited liability
18 company with reasons why it has denied the request for conversion.

19 F. Upon receipt of the certificate of conversion from the secretary of
20 state, and after compliance as applicable with the laws of the other state:

21 (1) A domestic limited liability company converting its state of
22 organization from this state to another state shall be deemed to be organized
23 solely under the laws of such other state and no longer under the laws of this
24 state. The limited liability company shall continue to exist without interruption
25 in its organizational form. All rights, title, interests, obligations, and liabilities
26 of the limited liability company shall continue in the limited liability company
27 without impairment, diminution, or termination. Any proceeding pending by
28 or against the limited liability company or its members or managers, in their
29 capacities as such, may be continued by or against the limited liability company

1 without the need for substituting a new party to such proceeding as a result of
2 any conversion of the state of organization as authorized in this Section. The
3 limited liability company shall be deemed to have appointed the secretary of
4 state in this state as its agent for service of process in any proceeding to enforce
5 any liability or obligation against the limited liability company arising or
6 existing prior to the effective time of the conversion of the state of organization.

7 (2) A foreign limited liability company converting its state of
8 organization from another state to this state shall be deemed to be organized
9 solely under the laws of this state and no longer under the laws of such other
10 state. The limited liability company shall continue to exist without interruption
11 in its organizational form. All rights, title, interests, obligations, and liabilities
12 of the limited liability company shall continue in the limited liability company
13 without impairment, diminution, or termination. Any proceeding pending by
14 or against the limited liability company or its members or managers, in their
15 capacities as such, may be continued by or against the limited liability company
16 without the need for substituting a new party to such proceeding as a result of
17 a change of the state of organization authorized under this Section. The
18 certificate of conversion issued by the Louisiana Secretary of State shall be
19 conclusive evidence of the fact that the limited liability company has been duly
20 organized under the laws of this state, except that in any proceeding brought by
21 the state to annul, forfeit, or vacate a company's franchise, the certificate of
22 conversion shall be only prima facie evidence of due organization.

23 G. In addition to the other requirements of this Section, a domestic
24 limited liability company converting its state of organization from this state to
25 another state shall also file with the Louisiana Secretary of State a certified copy
26 of the certificate of organization or other official certificate obtained by it from
27 the other state evidencing the company's organization under the laws of such
28 state. Such certified copy shall be filed with the Louisiana Secretary of State
29 not later than thirty days after issuance of the official certificate evidencing the

1 **company's organization under the laws of the other state.**

2 Section 2. The provisions of this act shall become effective on January 1, 2013.

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Julie J. Baxter.

DIGEST

Proposed law, relative to limited liability companies, provides that any domestic limited liability company may change its state of organization from this state to any other state, and any foreign limited liability company may change its jurisdiction or organization from any other state to this state, by filing a request for conversion and complying with the proposed law, provided that such change is not prohibited or inconsistent with the laws of this state (in the case of a domestic limited liability company) or the foreign state (in the case of a foreign limited liability company).

Proposed law provides that such a change of the limited liability company's state of organization may only be made pursuant to authorization thereof by a majority of its members or by such larger vote as the articles of organization or an operating agreement may require.

Proposed law further provides that a written request for conversion must include all of the following:

1. The name of the limited liability company, which shall comply with the provisions of R.S. 12:1306.
2. The full name and municipal address of each current manager of the limited liability company, if the management of that limited liability company is vested in one or more managers, or the full name of each of the current members, if management of the limited liability company is reserved to the members.
3. A statement as appropriate that the limited liability company is converting its state of organization from another named state to this state and is continuing its existence in and under the laws of this state, or is converting its state of organization from this state to another named state and is continuing its existence in and under the laws of such other named state.
4. A statement that a majority of the members, or such larger vote as the articles of organization or the operating agreement may require, has approved the conversion of the state of organization.
5. The manner and basis of converting the interests of the members of the limited liability company into the interests of the members in the converted limited liability company.
6. A statement that the limited liability company in changing its state of organization has complied with the laws and requirements of both the prior and new state of organization.
7. Any other provision, attachment, or exhibit, not inconsistent with law, that the members elect to set forth in the request for conversion.
8. If the limited liability company is converting its state of organization from another state to this state:

- (a) The location and municipal street address, if any, of the limited liability company's registered office. An address consisting of a post office box alone is insufficient.
- (b) The location and municipal street address, if any, of each of the limited liability company's registered agents together with a notarized affidavit of acknowledgment and acceptance signed by each such agent. An address consisting of a post office box alone is insufficient.

Proposed law further provides that the request for conversion may be delivered to the secretary of state for filing as of any specified date, and may select a given time on the date to be specified, as long as the date specified is within thirty days after the date of delivery.

Proposed law provides that if the secretary of state finds that the request for conversion is in compliance with the proposed law, and after all fees have been paid as required by law, the secretary of state shall record in his office the request for conversion and any attachments or exhibits thereto, after endorsing thereon the date and, if requested, the hour of filing. Thereafter the secretary of state shall either issue a certificate of conversion or advise the limited liability company with reasons why it has denied the request for conversion.

Proposed law provides that upon receipt of the certificate of conversion from the secretary of state, and after compliance as applicable with the laws of the other state:

1. A domestic limited liability company converting its state of organization to another state shall be deemed to be organized solely under the laws of such other state and no longer under the laws of this state. The limited liability company shall continue to exist without interruption in its organizational form. All rights, title, interests, obligations, and liabilities of the limited liability company shall continue in the limited liability company without impairment, diminution, or termination. Any proceeding pending by or against the limited liability company or its members or managers, in their capacities as such, may be continued by or against the limited liability company without the need for substituting a new party to such proceeding as a result of any conversion of the state of organization. The limited liability company shall be deemed to have appointed the secretary of state in this state as its agent for service of process in any proceeding to enforce any liability or obligation against the limited liability company arising or existing prior to the effective time of the conversion of the state of organization.
2. A foreign limited liability company converting its state of organization from another state to this state shall be deemed to be organized solely under the laws of this state and no longer under the laws of such other state. The limited liability company shall continue to exist without interruption in its organizational form. All rights, title, interests, obligations, and liabilities of the limited liability company shall continue in the limited liability company without impairment, diminution, or termination. Any proceeding pending by or against the limited liability company or its members or managers, in their capacities as such, may be continued by or against the limited liability company without the need for substituting a new party to such proceeding as a result of any conversion provided for herein. The certificate of conversion issued by the Louisiana Secretary of State shall be conclusive evidence of the fact that the limited liability company has been duly organized under the laws of this state, except that in any proceeding brought by the state to annul, forfeit or vacate a company's franchise, the certificate of conversion shall be only prima facie evidence of due organization.

Proposed law further provides that a domestic limited liability company converting its state of organization from this state to another state shall also file with the Louisiana Secretary of State a certified copy of the certificate of organization or other official certificate obtained by it from the other state evidencing the company's organization under the laws of such state.

Such certified copy shall be filed with the Louisiana Secretary of State not later than 30 days after issuance of the official certificate evidencing the company's organization under the laws of the other state.

Effective January 1, 2013.

(Adds R.S. 12:1308.3)