

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
92nd General Assembly
Regular Session, 2019

As Engrossed: S1/30/19
A Bill

SENATE BILL 142

By: Senator Teague

For An Act To Be Entitled

AN ACT TO ALLOW A FOR-PROFIT CORPORATION TO CONVERT
TO A NONPROFIT CORPORATION; TO DECLARE AN EMERGENCY;
AND FOR OTHER PURPOSES.

Subtitle

TO ALLOW A FOR-PROFIT CORPORATION TO
CONVERT TO A NONPROFIT CORPORATION; AND
TO DECLARE AN EMERGENCY.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code § 4-27-202, concerning articles of incorporation, is amended to add a new subsection to read as follows:

(d)(1) A for-profit corporation may convert to a nonprofit corporation under the Arkansas Nonprofit Corporation Act, §§ 4-28-201 – 4-28-206 and 4-28-209 – 4-28-224, or the Arkansas Nonprofit Corporation Act of 1993, § 4-33-101 et seq., upon the filing of an amendment to the corporation's articles of incorporation under either § 4-28-206 or § 4-33-202.

(2) After the filing and conversion have taken place, the converted corporation shall comply with either the Arkansas Nonprofit Corporation Act, §§ 4-28-201 – 4-28-206 and 4-28-209 – 4-28-224, or the Arkansas Nonprofit Corporation Act of 1993, § 4-33-101 et seq.

SECTION 2. Arkansas Code § 4-28-206 is amended to read as follows:
4-28-206. Articles of incorporation generally.

(a) Any association of persons or for-profit corporation organized under the Arkansas Business Corporation Act of 1987, § 4-27-101 et seq.



desirous of becoming incorporated under the provisions of the Arkansas Nonprofit Corporation Act, §§ 4-28-201 – 4-28-206 and 4-28-209 – 4-28-224, shall file with the circuit court of the county in which the main office or principal place of business of the proposed corporation is located or proposed to be located signed and verified articles of incorporation, which shall set forth the following:

- (1) The name of the corporation;
- (2) The period of duration, which may be perpetual;
- (3) The purposes for which the corporation is organized;
- (4) Any provisions, not inconsistent with law, which the incorporators elect to set forth in the articles of incorporation for the regulation of the internal affairs of the corporation, including any provision for distribution of assets on dissolution or final liquidation;
- (5) The address of its main office or principal place of business, and the name of its registered agent at that address;
- (6) The number of directors constituting the initial board of directors and the names and addresses of the persons who are to serve as the initial directors; ~~and~~
- (7) The name and address of each incorporator;
- (8) A statement that the corporation:
 - (A) Is a nonprofit corporation; and
 - (B) Has converted under the Arkansas Nonprofit Corporation Act, §§ 4-28-201 – 4-28-206 and 4-28-209 – 4-28-224; and
- (9)(A) A description of the treatment of shares of stock.
 - (B) The description of the treatment of shares of stock:
 - (i) may provide for the exchange of shares of stock for certificates of membership if the corporation has members; or
 - (ii) shall provide that the shares of stock be canceled by the board of directors if the corporation does not have members.
- (b) If the circuit court finds that the articles of incorporation conform to law and that the incorporation is for a lawful purpose and is in the best interests of the public, the court may issue an order approving the incorporation of the proposed association of persons.
- (c) If the court approves the incorporation, the articles of incorporation in duplicate, signed and verified, and a copy of the order of the court approving the incorporation shall be transmitted to the Secretary

of State, who shall, when all fees have been paid as prescribed in the Arkansas Nonprofit Corporation Act, §§ 4-28-201 – 4-28-206 and 4-28-209 – 4-28-224:

(1) ~~File~~ file the original of the articles in his or her office; and

(2) ~~Issue~~ issue a certificate of incorporation to which he or she shall affix the other copy of the articles endorsed with the word “Filed” and the month, day, and year of the filing and return the certificate of incorporation to the incorporators or their representative.

(d) A corporation may amend its articles of incorporation from time to time, provided that the amendments are lawful under the Arkansas Nonprofit Corporation Act, §§ 4-28-201 – 4-28-206 and 4-28-209 – 4-28-224. A copy of all amendments shall be filed with the Secretary of State within thirty (30) days after their passage.

(e)(1) A for-profit corporation may convert to a nonprofit corporation under the Arkansas Nonprofit Corporation Act, §§ 4-28-201 – 4-28-206 and 4-28-209 – 4-28-224, or the Arkansas Nonprofit Corporation Act of 1993, § 4-33-101 et seq., upon the filing of an amendment to the corporation’s articles of incorporation with the information required under this section.

(2) If an entity is a for-profit corporation that is converting to a nonprofit corporation, the conversion shall be approved by a three-fourths (3/4) vote of the shareholders of the business corporation.

(f) A conversion to a nonprofit corporation under this chapter is effective when an amendment to the articles of incorporation is filed with the Secretary of State and the Secretary of State has collected the filing fees, service fees, and copying fees required under § 4-33-122.

(g) A conversion to a nonprofit corporation under this chapter is not a dissolution.

SECTION 3. Arkansas Code § 4-33-202(a), concerning articles of incorporation, is amended to read as follows:

(a) The articles of incorporation must set forth:

(1) a corporate name for the corporation that satisfies the requirements of § 4-33-401;

(2) one (1) of the following statements:

(i) this corporation is a public benefit corporation;

- (ii) this corporation is a mutual benefit corporation; or
- (iii) this corporation is a religious corporation.
- (3) the information required by § 4-20-105(a);
- (4) the name and address of each incorporator;
- (5) whether or not the corporation will have members; ~~and~~
- (6) provisions not inconsistent with law regarding the distribution of assets on dissolution;

(7) If converting to a nonprofit corporation from another form of entity, then the articles of incorporation shall include:

(A) A statement that the corporation:

- (i) is a nonprofit corporation; and
- (ii) has converted under the Arkansas Nonprofit Corporation Act of 1993, § 4-33-101 et seq;

(B)(i) A description of the treatment of shares of stock.

(ii) The description of the treatment of shares of stock:

(a) may provide for the repurchase or exchange of shares of stock for certificates of membership if the corporation has members, and if the shares are repurchased, then the nonprofit corporation shall cancel the shares; or

(b) shall provide that the shares of stock be canceled by the board of directors if the corporation does not have members; and

(C) A statement that the Internal Revenue Service has been notified or will be notified within a reasonable time of the conversion and federal regulations were followed regarding the conversion.

SECTION 4. Arkansas Code § 4-33-202(c), concerning articles of incorporation, is amended to read as follows:

(c)(1) Each incorporator named in the articles must sign the articles.

(2) If an entity is a for-profit corporation that is converting to a nonprofit corporation, the conversion shall be approved by a three-fourths (3/4) vote of the shareholders of the business corporation.

SECTION 5. Arkansas Code § 4-33-202, concerning articles of incorporation, is amended to add additional subsections to read as follows:

(e) A for-profit corporation may convert to a nonprofit corporation under the Arkansas Nonprofit Corporation Act, §§ 4-28-201 – 4-28-206 and 4-28-209 – 4-28-224, or the Arkansas Nonprofit Corporation Act of 1993, § 4-33-101 et seq., upon the filing of an amendment to the corporation's articles of incorporation with the information required under this section.

(f) A conversion to a nonprofit corporation under this chapter is effective when an amendment to the articles of incorporation is filed with the Secretary of State and the Secretary of State has collected the filing fees, service fees, and copying fees required under § 4-33-122.

SECTION 6. EMERGENCY CLAUSE. It is found and determined by the General Assembly of the State of Arkansas that a for-profit corporation could face severe adverse tax consequences for reorganizing as a nonprofit corporation that may result in being subjected to unwarranted penalties; that existing statutes relating to the process of converting to a nonprofit entity need amending to eliminate uncertainty and to prevent irreparable harm on businesses operating in this state; and that this act is immediately necessary to clarify state law governing conversion by a for-profit corporation to a nonprofit corporation and provide for timely administration of business procedures. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on:

(1) The date of its approval by the Governor;

(2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or

(3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.

/s/Teague