ENGROSSED SENATE
BILL NO. 1257

By: Coffee of the Senate

and

Morgan of the House

[ business organizations - unlawful contracts - Oklahoma General Corporation Act - Oklahoma Limited Liability Company Act - Oklahoma Revised Uniform Limited Partnership Act - documentary stamp tax - fees - limited liability companies - codification - effective date ]

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 15 O.S. 1991, Section 217, is amended to read as follows:

Section 217. Every contract by which anyone is unreasonably restrained from exercising a lawful profession, trade, or business of any kind~~, otherwise than as provided by Sections 218 and 219 of this title,~~ is to that extent void.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 217.1 of Title 15, unless there is created a duplication in numbering, reads as follows:

A covenant not to compete is enforceable if it is ancillary to or part of an otherwise enforceable agreement at the time the agreement is made to the extent that it contains limitations on the time, geographical area, and scope of the activity to be restrained that are reasonable and do not impose a greater restraint than is necessary to protect the goodwill or other business interest of the promisee.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 217.2 of Title 15, unless there is created a duplication in numbering, reads as follows:

A. Except as provided in subsection C of this section, for breach of a covenant not to compete, a court may award the promisee damages, injunctive relief, or both damages and injunctive relief.

B. If the primary purpose of the agreement to which the covenant is ancillary is to obligate the promisor to render personal services for a term or at will, the promisee has the burden of establishing that the covenant meets the criteria specified by Section 2 of this act. If the agreement has a different primary purpose, the promisor has the burden of establishing that the covenant does not meet those criteria. For the purposes of this subsection, the "burden of establishing" a fact means the burden of persuading the triers of fact that the existence of the fact is more probable than its nonexistence.

C. If the covenant is found to be ancillary to or part of an otherwise enforceable agreement but contains limitations as to time, geographical area, or scope of the activity to be restrained that are not reasonable and that impose a greater restraint than is necessary to protect the goodwill or other business interest of the promisee, the court shall reform the covenant to the extent necessary to cause the limitations contained in the covenant as to time, geographical area, and scope of the activity to be restrained to be reasonable and to impose a restraint that is not greater than necessary to protect the goodwill or other business interest of the promisee and to enforce the covenant as reformed, except that the court may not award the promisee damages for a breach of the covenant before its reformation and the relief granted to the promisee shall be limited to injunctive relief. If the primary purpose of the agreement to which the covenant is ancillary is to obligate the promisor to render personal services, the promisor

establishes that the promisee knew at the time of the execution of the agreement that the covenant did not contain limitations as to time, geographical area, and scope of the activity to be restrained that were reasonable and the limitations imposed a greater restraint than necessary to protect the goodwill or other business interest of the promisee, and the promisee sought to enforce the covenant to a greater extent than was necessary to protect the goodwill or other business interest of the promisee, the court may award the promisor the costs, including reasonable attorney's fees, actually and reasonably incurred by the promisor in defending the action to enforce the covenant.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 217.3 of Title 15, unless there is created a duplication in numbering, reads as follows:

The criteria for enforceability of a covenant not to compete provided by Section 2 of this act and the procedures and remedies in an action to enforce a covenant not to compete provided by Section 3 of this act are exclusive and preempt any other criteria for enforceability of a covenant not to compete or procedures and remedies in an action to enforce a covenant not to compete under the common law or otherwise.

SECTION 5. AMENDATORY 18 O.S. 1991, Section 1006, as last amended by Section 3, Chapter 69, O.S.L. 1996 (18 O.S. Supp. 1999, Section 1006), is amended to read as follows:

Section 1006.

CERTIFICATE OF INCORPORATION; CONTENTS

A. The certificate of incorporation shall set forth:

1. The name of the corporation which shall contain one of the words "association", "company", "corporation", "club", "foundation", "fund", "incorporated", "institute", "society", "union", "syndicate", or "limited" or ~~one of the~~ abbreviations ~~"co.", "corp.", "inc.", "ltd.",~~ thereof, with or without punctuation, or

words or abbreviations, with or without punctuation of like import ~~in other languages~~ of foreign countries or jurisdictions; provided, that such abbreviations ~~are~~ shall be written in Roman characters or letters, and ~~which~~ shall be such as to distinguish it upon the records in the Office of the Secretary of State from:

a. names of other corporations organized under the laws of this state then existing or which existed at any time during the preceding three (3) years, ~~or~~

b. names of foreign corporations registered in accordance with the laws of this state then existing or which existed at any time during the preceding three (3) years, ~~or~~

c. names of then existing limited partnerships whether organized pursuant to the laws of this state or registered as foreign limited partnerships in this state, ~~or~~

d. trade names or fictitious names filed with the Secretary of State, ~~or~~

e. corporate, limited liability company or limited partnership names reserved with the Secretary of State, or

f. names of then existing limited liability companies whether organized pursuant to the laws of this state or registered as foreign limited liability companies in this state;

2. The address, including the street, number, city, and county, of the corporation's registered office in this state, and the name of the corporation's registered agent at ~~such~~ that address;

3. The nature of the business or purposes to be conducted or promoted. It shall be sufficient to state, either alone or with other businesses or purposes, that the purpose of the corporation is to engage in any lawful act or activity for which corporations may

be organized under the general corporation law of ~~Oklahoma~~ this state, and by ~~such~~ that statement all lawful acts and activities shall be within the purposes of the corporation, except for express limitations, if any;

4. If the corporation is to be authorized to issue only one class of stock, the total number of shares of stock which the corporation shall have authority to issue and the par value of each ~~of such shares~~ share, or a statement that all ~~such~~ shares are to be without par value. If the corporation is to be authorized to issue more than one class of stock, the certificate of incorporation shall set forth the total number of shares of all classes of stock which the corporation shall have authority to issue and the number of shares of each class, and shall specify each class the shares of which are to be without par value and each class the shares of which are to have par value and the par value of the shares of each ~~such~~ class. The provisions of this paragraph shall not apply to corporations which are not organized for profit and which are not to have authority to issue capital stock. In the case of such corporations, the fact that they are not to have authority to issue capital stock shall be stated in the certificate of incorporation;

5. The name and mailing address of the incorporator or incorporators;

6. If the powers of the incorporator or incorporators are to terminate upon the filing of the certificate of incorporation, the names and mailing addresses of the persons who are to serve as directors until the first annual meeting of shareholders or until their successors are elected and qualify; and

7. a. If the corporation is not for profit:

~~a.~~ (1) that the corporation does not afford pecuniary gain, incidentally or otherwise, to its members as such,

~~b.~~ (2) the name and mailing address of each trustee or director,

~~c.~~ (3) the number of trustees or directors to be elected at the first meeting, and

~~d.~~ (4) in the event the corporation is a church, the street address of the location of the church.

b. The restriction on affording pecuniary gain to members shall not prevent a not-for-profit corporation operating as a cooperative from rebating excess revenues to patrons who may also be members.

B. In addition to the matters required to be set forth in the certificate of incorporation pursuant to the provisions of subsection A of this section, the certificate of incorporation may also contain any or all of the following ~~matters~~:

1. Any provision for the management of the business and for the conduct of the affairs of the corporation, and any provision creating, defining, limiting ~~and~~, or regulating the powers of the corporation, the directors, ~~and~~ or the shareholders, or any class of the shareholders, or the members of a nonstock corporation, if such provisions are not contrary to the laws of this state. Any provision which is required or permitted by any provision of the Oklahoma General Corporation Act to be stated in the bylaws may instead be stated in the certificate of incorporation;

2. The following provisions, in substantially the following form: "Whenever a compromise or arrangement is proposed between this corporation and its creditors or any class of them ~~and/~~or between this corporation and its shareholders or any class of them, any court of equitable jurisdiction within ~~the State of Oklahoma~~ this state, on the application in a summary way of this corporation or of any creditor or shareholder thereof or on the application of any receiver or receivers appointed for this corporation under the provisions of Section 1106 of this title or on the application of

trustees in dissolution or of any receiver or receivers appointed for this corporation under the provisions of Section 1100 of this title, may order a meeting of the creditors or class of creditors, ~~and/~~or of the shareholders or class of shareholders of this corporation, as the case may be, to be summoned in ~~such~~ the manner ~~as~~ the court directs. If a majority in number representing three-fourths (3/4) in value of the creditors or class of creditors, ~~and/~~or of the shareholders or class of shareholders of this corporation, as the case may be, agree to any compromise or arrangement and to any reorganization of this corporation as a consequence of ~~such~~ a compromise or arrangement, the compromise or arrangement and the reorganization, if sanctioned by the court to which the application has been made, shall be binding on all the creditors or class of creditors, and~~/or~~ on all of the shareholders or class of shareholders, of ~~this~~ the corporation, as the case may be, and also on ~~this~~ the corporation.";

3. ~~Such provisions as may be desired~~ Provisions granting to the holders of the stock of the corporation, or the holders of any class or series of a class thereof, the preemptive right to subscribe to any or all additional issues of stock of the corporation of any or all classes or series thereof, or to any securities of the corporation convertible into such stock. No shareholder shall have any preemptive right to subscribe to an additional issue of stock or to any security convertible into such stock unless, and except to the extent that, ~~such~~ the right is expressly granted ~~to him~~ in the certificate of incorporation. Preemptive rights, if granted, shall not extend to fractional shares;

4. Provisions requiring, for any corporate action, the vote of a larger portion of the stock or of any class or series thereof, or of any other securities having voting power, or a larger number of the directors, than is required by the provisions of the Oklahoma General Corporation Act;

5. A provision limiting the duration of the corporation's existence to a specified date; otherwise, the corporation shall have perpetual existence;

6. A provision imposing personal liability for the debts of the corporation on its shareholders or members to a specified extent and upon specified conditions; otherwise, the shareholders or members of a corporation shall not be personally liable for the payment of the corporation's debts, except as they may be liable by reason of their own conduct or acts;

7. a. A provision eliminating or limiting the personal liability of a director to the corporation or its shareholders for monetary damages for breach of fiduciary duty as a director~~,~~; provided, that ~~such~~ this provision shall not eliminate or limit the liability of a director:

~~a.~~ (1) for any breach of the director's duty of loyalty to the corporation or its shareholders; ~~or~~

~~b.~~ (2) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law; ~~or~~

~~c.~~ (3) under Section 1053 of this title; or

~~d.~~ (4) for any transaction from which the director derived an improper personal benefit.

b. No such provision shall eliminate or limit the liability of a director for any act or omission occurring prior to the date when ~~such~~ the provision becomes effective.

C. It shall not be necessary to set forth in the certificate of incorporation any of the powers conferred on corporations by the provisions of the Oklahoma General Corporation Act.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1014.1 of Title 18, unless there is created a duplication in numbering, reads as follows:

Any shareholder, member, or director may bring an action in the district court for the interpretation, application, or enforcement of the provisions of the certificate of incorporation or the bylaws of a domestic corporation.

SECTION 7. AMENDATORY 18 O.S. 1991, Section 1049, as amended by Section 8, Chapter 422, O.S.L. 1998 (18 O.S. Supp. 1999, Section 1049), is amended to read as follows:

Section 1049.

DIVIDENDS; PAYMENT; WASTING ASSET CORPORATIONS

A. The directors of every corporation, subject to any restrictions contained in its certificate of incorporation, may declare and pay dividends upon the shares of its capital stock, or to its members if the corporation is a nonstock corporation, either out of its surplus, as defined in and computed in accordance with the provisions of Sections 1035 and 1079 of this title, or in case there is no surplus, out of its net profits for the fiscal year in which the dividend is declared or the preceding fiscal year. If the capital of the corporation, computed in accordance with the provisions of Sections 1035 and 1079 of this title, shall have been diminished by depreciation in the value of its property, or by losses, or otherwise, to an amount less than the aggregate amount of the capital represented by the issued and outstanding stock of all classes having a preference upon the distribution of assets, the directors of the corporation shall not declare and pay out of the net profits any dividends upon any shares of any classes of its capital stock until the deficiency in the amount of capital represented by the issued and outstanding stock of all classes having a preference upon the distribution of assets shall have been repaired. Nothing in this subsection shall invalidate or otherwise

affect a note, debenture, or other obligation of the corporation paid by it as a dividend on shares of its stock, or any payment made thereon, if at the time the note, debenture, or obligation was delivered by the corporation, the corporation had either surplus or net profits as provided in this subsection from which the dividend could lawfully have been paid.

B. Subject to any restrictions contained in its certificate of incorporation, the directors of any corporation engaged in the exploitation of wasting assets including, but not limited to, a corporation engaged in the exploitation of natural resources or other wasting assets, including patents, or engaged primarily in the liquidation of specific assets, may determine the net profits derived from the exploitation of wasting assets or the net proceeds derived from liquidation without taking into consideration the depletion of such assets resulting from lapse of time, consumption, liquidation, or exploitation.

SECTION 8. AMENDATORY 18 O.S. 1991, Section 1055, is amended to read as follows:

Section 1055.

RESTRICTION ON TRANSFER OF SECURITIES

A. A written restriction or restrictions on the transfer or registration of transfer of a security of a corporation, or on the amount of the corporation's securities that may be owned by any person or group of persons, if permitted by this section and noted conspicuously on the certificate or certificates representing the security or securities so restricted, in the case of uncertificated shares, contained in the notice or notices sent pursuant to the provisions of subsection F of Section ~~32~~ 1032 of this ~~act~~ title, may be enforced against the holder of the restricted security or securities or any successor or transferee of the holder including an executor, administrator, trustee, guardian or other fiduciary entrusted with like responsibility for the person or estate of the

holder. Unless noted conspicuously on the certificate or certificates representing the security or securities so restricted, in the case of uncertificated shares, contained in the notice or notices sent pursuant to the provisions of subsection F of Section ~~32~~ 1032 of this ~~act~~ title, a restriction, even though permitted by this section, is ineffective except against a person with actual knowledge of the restriction.

B. A restriction on the transfer or registration of transfer of securities of a corporation, or on the amount of a corporation's securities that may be owned by any person or group of persons, may be imposed either by the certificate of incorporation or by the bylaws or by an agreement among any number of security holders or among such holders and the corporation. No restriction so imposed shall be binding with respect to securities issued prior to the adoption of the restriction unless the holders of the securities are parties to an agreement or voted in favor of the restriction.

C. A restriction on the transfer or registration of transfer of securities of a corporation or on the amount of securities that may be owned by any person or group of persons is permitted by the provisions of this section if it:

1. Obligates the holder of the restricted securities to offer to the corporation or to any other holders of securities of the corporation or to any other person or to any combination of the foregoing, a prior opportunity, to be exercised within a reasonable time, to acquire the restricted securities; ~~or~~

2. Obligates the corporation or any holder of securities of the corporation or any other person or any combination of the foregoing, to purchase the securities which are the subject of an agreement respecting the purchase and sale of the restricted securities; ~~or~~

3. Requires the corporation or the holders of any class of securities of the corporation to consent to any proposed transfer of the restricted securities or to approve the proposed transferee of

the restricted securities, or to approve the amount of securities of the corporation that may be owned by any person or group of persons; ~~or~~

4. Obligates the holder of the restricted securities to sell or transfer an amount of restricted securities to the corporation or to any other holders of securities of the corporation or to any other person or to any combination of the foregoing, or causes or results in the automatic sale or transfer of an amount of restricted securities to the corporation or to any other holders of securities of the corporation or to any other person or to any combination of the foregoing; or

5. Prohibits or restricts the transfer of the restricted securities to, or the ownership of restricted securities by, designated persons ~~or~~, classes of persons, or groups of persons, and such designation is not manifestly unreasonable.

D. Any restriction on the transfer or the registration of transfer of the ~~shares~~ securities of a corporation, or on the amount of securities of a corporation that may be owned by a person or group of persons, for ~~the purpose of~~ any of the following purposes shall be conclusively presumed to be for a reasonable purpose:

1. Maintaining any local, state, federal, or foreign tax advantage to the corporation or its shareholders, including without limitation:

a. maintaining ~~it's~~ the corporation's status as an electing small business corporation under Subchapter S of the United States Internal Revenue Code ~~or of~~,

b. maintaining or preserving any ~~other~~ tax ~~advantage to the corporation is conclusively presumed to be for a reasonable purpose~~ attribute, including without limitation, net operating losses, or

c. qualifying or maintaining the qualification of the corporation as a real estate investment trust pursuant

to the United States Internal Revenue Code or regulations adopted pursuant to the United States Internal Revenue Code; or

2. Maintaining any statutory or regulatory advantage or complying with any statutory or regulatory requirements under applicable local, state, federal, or foreign law.

E. Any other lawful restriction on transfer or registration of transfer of securities, or on the amount of securities that may be owned by any person or group of persons, is permitted by the provisions of this section.

SECTION 9. AMENDATORY 18 O.S. 1991, Section 1077, as last amended by Section 12, Chapter 421, O.S.L. 1999 (18 O.S. Supp. 1999, Section 1077), is amended to read as follows:

Section 1077.

AMENDMENT OF CERTIFICATE OF INCORPORATION AFTER RECEIPT OF PAYMENT FOR STOCK; NONSTOCK CORPORATIONS

A. 1. After a corporation has received payment for any of its capital stock, it may amend its certificate of incorporation, from time to time, in any and as many respects as may be desired, so long as its certificate of incorporation as amended would contain only provisions as it would be lawful and proper to insert in an original certificate of incorporation filed at the time of the filing of the amendment; and if a change in stock or the rights of shareholders, or an exchange, reclassification, subdivision, combination, or cancellation of stock or rights of shareholders is to be made, provisions as may be necessary to effect the change, exchange, reclassification, subdivision, combination, or cancellation. In particular, and without limitation upon the general power of amendment, a corporation may amend its certificate of incorporation, from time to time, so as:

a. to change its corporate name,

b. to change, substitute, enlarge, or diminish the nature of its business or its corporate powers and purposes,

c. to increase or decrease its authorized capital stock or to reclassify the same, by changing the number, par value, designations, preferences, or relative, participating, optional, or other special rights of the shares, or the qualifications, limitations, or restrictions of such rights, or by changing shares with par value into shares without par value, or shares without par value into shares with par value either with or without increasing or decreasing the number of shares or by subdividing or combining the outstanding shares of any class or series of a class of shares into a greater or lesser number of outstanding shares,

d. to cancel or otherwise affect the right of the holders of the shares of any class to receive dividends which have accrued but have not been declared,

e. to create new classes of stock having rights and preferences either prior and superior or subordinate and inferior to the stock of any class then authorized, whether issued or unissued, or

f. to change the period of its duration.

2. Any or all changes or alterations provided for in paragraph 1 of this subsection may be effected by one certificate of amendment.

B. Every amendment authorized by the provisions of subsection A of this section shall be made and effected in the following manner:

1. If the corporation has capital stock, its board of directors shall adopt a resolution setting forth the amendment proposed, declaring its advisability, and either calling a special meeting of the shareholders entitled to vote in respect thereof for the

consideration of the amendment or directing that the amendment proposed be considered at the next annual meeting of shareholders. The special or annual meeting shall be called and held upon notice in accordance with the provisions of Section 1067 of this title. The notice shall set forth the amendment in full or a brief summary of the changes to be effected thereby, as the directors shall deem advisable. At the meeting, a vote of the shareholders entitled to vote thereon shall be taken for and against the proposed amendment. If a majority of the outstanding stock entitled to vote thereon, and a majority of the outstanding stock of each class entitled to vote thereon as a class, has been voted in favor of the amendment, a certificate setting forth the amendment and certifying that the amendment has been duly adopted in accordance with the provisions of this section shall be executed, acknowledged, and filed and shall become effective in accordance with the provisions of Section 1007 of this title~~.~~;

2. The holders of the outstanding shares of a class shall be entitled to vote as a class upon a proposed amendment, whether or not entitled to vote thereon by the provisions of the certificate of incorporation, if the amendment would increase or decrease the aggregate number of authorized shares of the class, increase or decrease the par value of the shares of the class, or alter or change the powers, preferences, or special rights of the shares of the class so as to affect them adversely. If any proposed amendment would alter or change the powers, preferences, or special rights of one or more series of any class so as to affect them adversely, but shall not so affect the entire class, then only the shares of the series so affected by the amendment shall be considered a separate class for the purposes of this paragraph. The number of authorized shares of any such class or classes of stock may be increased or decreased, but not below the number of shares thereof then outstanding, by the affirmative vote of the holders of a majority of

the stock of the corporation entitled to vote irrespective of the provisions of this paragraph, if so provided in the original certificate of incorporation, in any amendment thereto which created the class or classes of stock or which was adopted prior to the issuance of any shares of the class or classes of stock, or in any amendment thereto which was authorized by a resolution or resolutions adopted by the affirmative vote of the holders of a majority of the class or classes of stock~~.~~; and

3. If the corporation has no capital stock, then the governing body thereof shall adopt a resolution setting forth the amendment proposed and declaring its advisability. If ~~at a subsequent meeting, held upon notice stating the purpose thereof, not earlier than fifteen (15) days and not later than sixty (60) days from the meeting at which the resolution has been passed,~~ a majority of all of the members of the governing body shall vote in favor of the amendment, a ~~certificate~~ certification thereof shall be executed, acknowledged, and filed and shall become effective in accordance with the provisions of Section 1007 of this title. The certificate of incorporation of a corporation without capital stock may contain a provision requiring an amendment thereto to be approved by a specified number or percentage of the members or of any specified class of members of the corporation in which event ~~only one meeting of the governing body thereof shall be necessary, and~~ the proposed amendment shall be submitted to the members or to any specified class of members of the corporation without capital stock in the same manner, so far as applicable, as is provided for in this section for an amendment to the certificate of incorporation of a stock corporation; and in the event of the adoption thereof by the members, a certificate evidencing the amendment shall be executed, acknowledged, and filed and shall become effective in accordance with the provisions of Section 1007 of this title.

4. Whenever the certificate of incorporation shall require action by the board of directors, by the holders of any class or series of shares, or by the holders of any other securities having voting power, the vote of a greater number or proportion than is required by the provisions of the Oklahoma General Corporation Act, the provision of the certificate of incorporation requiring a greater vote shall not be altered, amended, or repealed except by a greater vote.

C. The resolution authorizing a proposed amendment to the certificate of incorporation may provide that at any time prior to the effectiveness of the filing of the amendment with the Secretary of State, notwithstanding authorization of the proposed amendment by the shareholders of the corporation or by the members of a nonstock corporation, the board of directors or governing body may abandon the proposed amendment without further action by the shareholders or members.

SECTION 10. AMENDATORY 18 O.S. 1991, Section 1081, as last amended by Section 13, Chapter 421, O.S.L. 1999 (18 O.S. Supp. 1999, Section 1081), is amended to read as follows:

Section 1081.

MERGER OR CONSOLIDATION OF DOMESTIC CORPORATIONS

A. Any two or more corporations existing under the laws of this state may merge into a single corporation, which may be any one of the constituent corporations or may consolidate into a new corporation formed by the consolidation, pursuant to an agreement of merger or consolidation, as the case may be, complying and approved in accordance with the provisions of this section.

B. The board of directors of each corporation which desires to merge or consolidate shall adopt a resolution approving an agreement of merger or consolidation and declaring its advisability. The agreement shall state:

1. The terms and conditions of the merger or consolidation;

2. The mode of carrying the same into effect;

3. In the case of a merger, the amendments or changes in the certificate of incorporation of the surviving corporation as are desired to be effected by the merger, or, if no amendments or changes are desired, a statement that the certificate of incorporation of the surviving corporation shall be its certificate of incorporation of the surviving or resulting corporation;

4. In the case of a consolidation, that the certificate of incorporation of the resulting corporation shall be as is set forth in an attachment to the agreement;

5. The manner of converting the shares of each of the constituent corporations into shares or other securities of the corporation surviving or resulting from the merger or consolidation, and, if any shares of any of the constituent corporations are not to be converted solely into shares or other securities of the surviving or resulting corporation, the cash, property, rights, or securities of any other corporation which the holders of the shares are to receive in exchange for or upon conversion of the shares and the surrender of any certificates evidencing them, which cash, property, rights, or securities of any other corporation may be in addition to or in lieu of shares or other securities of the surviving or resulting corporation; and

6. Other details or provisions as are deemed desirable, including without limiting the generality of the foregoing, a provision for the payment of cash in lieu of the issuance or recognition of fractional shares, interests or rights, or for any other arrangement with respect thereto, consistent with the provisions of Section 1036 of this title. The agreement so adopted shall be executed and acknowledged in accordance with the provisions of Section 1007 of this title. Any of the terms of the agreement of merger or consolidation may be made dependent upon facts ascertainable outside of the agreement; provided, that the manner in

which these facts shall operate upon the terms of the agreement is clearly and expressly set forth in the agreement of merger or consolidation. The term "facts" as used in this paragraph, includes, but is not limited to, the occurrence of any event, including a determination or action by any person or body, including the corporation.

C. The agreement required by the provisions of subsection B of this section shall be submitted to the shareholders of each constituent corporation at an annual or special meeting thereof for the purpose of acting on the agreement. The terms of the agreement may require that the agreement be submitted to the shareholders whether or not the board of directors determines at any time subsequent to declaring its advisability that the agreement is no longer advisable and recommends that the shareholders reject it. Due notice of the time, place, and purpose of the meeting shall be mailed to each holder of stock whether voting or nonvoting, of the corporation at the address which appears on the records of the corporation, at least twenty (20) days prior to the date of the meeting. The notice shall contain a copy of the agreement or a brief summary thereof, as the directors shall deem advisable; provided, however, the notice shall be effective only with respect to mergers or consolidations for which the notice of the shareholders meeting to vote thereon has been mailed after November 1, 1988. At the meeting the agreement shall be considered and a vote taken for its adoption or rejection. If a majority of the outstanding stock of the corporation entitled to vote thereon shall be voted for the adoption of the agreement, that fact shall be certified on the agreement by the secretary or the assistant secretary of the corporation. If the agreement shall be so adopted and certified by each constituent corporation, it shall then be filed and shall become effective in accordance with the provisions of Section 1007 of this title. In lieu of filing an agreement of

merger or consolidation required by this section, the surviving or resulting corporation may file a certificate of merger or consolidation executed in accordance with the provisions of Section 1007 of this title and which states:

1. The name and state of incorporation of each of the constituent corporations;

2. That an agreement of merger or consolidation has been approved, adopted, certified, executed, and acknowledged by each of the constituent corporations in accordance with the provisions of this section;

3. The name of the surviving or resulting corporation;

4. In the case of a merger, the amendments or changes in the certificate of incorporation of the surviving corporation as are desired to be effected by the merger, or, if no amendments or changes are desired, a statement that the certificate of incorporation of the surviving corporation shall be its certificate of incorporation;

5. In the case of a consolidation, that the certificate of incorporation of the resulting corporation shall be as is set forth in an attachment to the certificate;

6. That the executed agreement of consolidation or merger is on file at the principal place of business of the surviving corporation, stating the address thereof; and

7. That a copy of the agreement of consolidation or merger will be furnished by the surviving corporation, on request and without cost, to any shareholder of any constituent corporation. For purposes of Sections 1084 and 1086 of this title, the term "shareholder" shall be deemed to include "member".

D. Any agreement of merger or consolidation may contain a provision that at any time prior to the time that the agreement, or a certificate filed with the Secretary of State in lieu thereof, becomes effective in accordance with Section 1007 of this title, the

agreement may be terminated by the board of directors of any constituent corporation notwithstanding approval of the agreement by the shareholders of all or any of the constituent corporations; provided, if the agreement of merger or consolidation is terminated after the filing of the agreement, or a certificate filed with the Secretary of State in lieu thereof, but before the agreement or certificate has become effective, a certificate of termination of merger or consolidation shall be filed in accordance with Section 1007 of this title. Any agreement of merger or consolidation may contain a provision that the boards of directors of the constituent corporations may amend the agreement at any time prior to the time that the agreement, or a certificate filed with the Secretary of State in lieu thereof, becomes effective in accordance with Section 1007 of this title; provided, that an amendment made subsequent to the adoption of the agreement by the shareholders of any constituent corporation shall not:

1. Alter or change the amount or kind of shares, securities, cash, property, or rights to be received in exchange for or on conversion of all or any of the shares of any class or series thereof of the constituent corporation;

2. Alter or change any term of the certificate of incorporation of the surviving corporation to be effected by the merger or consolidation; or

3. Alter or change any of the terms and conditions of the agreement if an alteration or change would adversely affect the holders of any class or series thereof of the constituent corporation.

If the agreement of merger or consolidation is amended after the filing of the agreement, or a certificate in lieu thereof, with the Secretary of State, but before the agreement or certificate has become effective, a certificate of amendment of merger or

consolidation shall be filed in accordance with Section 1007 of this title.

E. In the case of a merger, the certificate of incorporation of the surviving corporation shall automatically be amended to the extent, if any, that changes in the certificate of incorporation are set forth in the certificate of merger.

F. Notwithstanding the requirements of subsection C of this section, unless required by its certificate of incorporation, no vote of shareholders of a constituent corporation surviving a merger shall be necessary to authorize a merger if:

1. The agreement of merger does not amend in any respect the certificate of incorporation of the constituent corporation;

2. Each share of stock of the constituent corporation outstanding immediately prior to the effective date of the merger is to be an identical outstanding or treasury share of the surviving corporation after the effective date of the merger; and

3. Either no shares of common stock of the surviving corporation and no shares, securities, or obligations convertible into such stock are to be issued or delivered under the plan of merger, or the authorized unissued shares or the treasury shares of common stock of the surviving corporation to be issued or delivered under the plan of merger plus those initially issuable upon conversion of any other shares, securities, or obligations to be issued or delivered under the plan do not exceed twenty percent (20%) of the shares of common stock of the constituent corporation outstanding immediately prior to the effective date of the merger. No vote of shareholders of a constituent corporation shall be necessary to authorize a merger or consolidation if no shares of the stock of the corporation shall have been issued prior to the adoption by the board of directors of the resolution approving the agreement of merger or consolidation. If an agreement of merger is adopted by the constituent corporation surviving the merger, by

action of its board of directors and without any vote of its shareholders pursuant to the provisions of this subsection, the secretary or assistant secretary of that corporation shall certify on the agreement that the agreement has been adopted pursuant to the provisions of this subsection and:

a. if it has been adopted pursuant to paragraph 1 of this subsection, that the conditions specified have been satisfied, or

b. if it has been adopted pursuant to paragraph 2 of this subsection, that no shares of stock of the corporation were issued prior to the adoption by the board of directors of the resolution approving the agreement of merger or consolidation.

The agreement so adopted and certified shall then be filed and shall become effective in accordance with the provisions of Section 1007 of this title. Filing shall constitute a representation by the person who executes the certificate that the facts stated in the certificate remain true immediately prior to filing.

G. 1. Notwithstanding the requirements of subsection C of this section, unless expressly required by its certificate of incorporation, no vote of shareholders of a constituent corporation shall be necessary to authorize a merger with or into a single direct or indirect wholly owned subsidiary of the constituent corporation if:

a. the constituent corporation and the direct or indirect wholly owned subsidiary of the constituent corporation are the only constituent corporations to the merger,

b. each share or fraction of a share of the capital stock of the constituent corporation outstanding immediately prior to the effective time of the merger is converted in the merger into a share or equal fraction of share of capital stock of a holding company having the same

designations, rights, powers, and preferences, and the qualifications, limitations, and restrictions thereof, as the share of stock of the constituent corporation being converted in the merger,

c. the holding company and each of the constituent corporations to the merger are corporations of this state,

d. the certificate of incorporation and bylaws of the holding company immediately following the effective time of the merger contain provisions identical to the certificate of incorporation and bylaws of the constituent corporation immediately prior to the effective time of the merger, other than provisions, if any, regarding the incorporator or incorporators, the corporate name, the registered office and agent, the initial board of directors, and the initial subscribers of shares and provisions contained in any amendment to the certificate of incorporation as were necessary to effect a change, exchange, reclassification, or cancellation of stock, if a change, exchange, reclassification, or cancellation has become effective,

e. as a result of the merger, the constituent corporation or its successor corporation becomes or remains a direct or indirect wholly owned subsidiary of the holding company,

f. the directors of the constituent corporation become or remain the directors of the holding company upon the effective time of the merger,

g. the certificate of incorporation of the surviving corporation immediately following the effective time of the merger is identical to the certificate of

incorporation of the constituent corporation immediately prior to the effective time of the merger, other than provisions, if any, regarding the incorporator or incorporators, the corporate name, the registered office and agent, the initial board of directors, and the initial subscribers of shares and provisions contained in any amendment to the certificate of incorporation as were necessary to effect a change, exchange, reclassification, or cancellation of stock, if a change, exchange, reclassification, or cancellation has become effective; provided, however, that:

(1) the certificate of incorporation of the surviving corporation, other than the election or removal of directors of the surviving corporation, shall be amended in the merger to contain a provision requiring that any act or transaction by or involving the surviving corporation that requires for its adoption under this title or its certificate of incorporation the approval of the shareholders of the surviving corporation shall, by specific reference to this subsection, require, in addition, the approval of the shareholders of the holding company or any successor by merger, by the same vote as is required by this title or by the certificate of incorporation of the surviving corporation, and

(2) the certificate of incorporation of the surviving corporation may be amended in the merger to reduce the number of classes and shares of capital stock that the surviving corporation is authorized to issue, and

h. the shareholders of the constituent corporation do not recognize gain or loss for federal income tax purposes as determined by the board of directors of the constituent corporation.

Neither division (1) of subparagraph g of this paragraph, nor any provision of a surviving corporation's certificate of incorporation required by division (1) of subparagraph g of this paragraph shall be deemed or construed to require approval of the shareholders of the holding company to elect or remove directors of the surviving corporation.

2. As used in this subsection, the term "holding company" means a corporation which, from its incorporation until consummation of a merger governed by this subsection, was at all times a direct or indirect wholly owned subsidiary of the constituent corporation and whose capital stock is issued in a merger.

3. From and after the effective time of a merger adopted by a constituent corporation by action of its board of directors and without any vote of shareholders pursuant to this subsection:

a. to the extent the restriction of Section 1090.3 of this title applied to the constituent corporation and its shareholders at the effective time of the merger, restrictions shall apply to the holding company and its shareholders immediately after the effective time of the merger as though it were the constituent corporation, and all shareholders of stock of the holding company acquired in the merger shall for purposes of Section 1090.3 of this title be deemed to have been acquired at the time that the shareholder of stock of the constituent corporation converted in the merger was acquired; provided, that any shareholder who immediately prior to the effective time of the merger was not an interested shareholder within the

meaning of Section 1090.3 of this title shall not solely by reason of the merger become an interested shareholder of the holding company, and

b. if the corporate name of the holding company immediately following the effective time of the merger is the same as the corporate name of the constituent corporation immediately prior to the effective time of the merger, the shares of capital stock of the holding company into which the shares of capital stock of the constituent corporation are converted shall be represented by the stock certificates that previously represented the shares of capital stock of the constituent corporation. If any agreement of merger is adopted by a constituent corporation by action of its board of directors and without any vote of shareholders pursuant to this subsection, the secretary or assistant secretary of the constituent corporation shall certify on the agreement that the agreement has been adopted pursuant to this subsection and that the conditions specified in this subparagraph have been satisfied. The agreement so adopted and certified shall then be filed and become effective in accordance with Section 1007 of this title. Filing shall constitute a representation by the person who executes the agreement that the facts stated in the certificate remain true immediately prior to the filing.

SECTION 11. AMENDATORY 18 O.S. 1991, Section 1083, as amended by Section 17, Chapter 422, O.S.L. 1998 (18 O.S. Supp. 1999, Section 1083), is amended to read as follows:

Section 1083.

MERGER OF PARENT CORPORATION AND SUBSIDIARY OR SUBSIDIARIES

A. In any case in which at least ninety percent (90%) of the outstanding shares of each class of stock of a corporation or corporations, other than a corporation which has in its certificate of incorporation the provision required by division (1) of subparagraph g of paragraph 1 of subsection G of Section 1081 of this title, of which class there are outstanding shares that, absent this subsection, would be entitled to vote on the merger, is owned by another corporation and one of the corporations is a corporation of this state and the other or others are corporations of this state or of any other state or states or of the District of Columbia, and the laws of the other state or states or of the District of Columbia permit a corporation of that jurisdiction to merge with a corporation of another jurisdiction, the corporation having such stock ownership may either merge the other corporation or corporations into itself and assume all of its or their obligations, or merge itself, or itself and one or more of the other corporations, into one of the other corporations by executing, acknowledging, and filing, in accordance with the provisions of Section 1007 of this title, a certificate of ownership and merger setting forth a copy of the resolution of its board of directors to merge and the date of its adoption; provided, however, that in case the parent corporation shall not own all the outstanding stock of all the subsidiary corporations which are parties to the merger, the resolution of the board of directors of the parent corporation shall state the terms and conditions of the merger, including the securities, cash, property, or rights to be issued, paid, delivered, or granted by the surviving corporation upon surrender of each share of the subsidiary corporation or corporations not owned by the parent corporation. Any of the terms of the resolution of the board of directors to so merge may be made dependent upon facts ascertainable outside of such resolution, provided that the manner in which such facts shall operate upon the terms of the resolution

is clearly and expressly set forth in the resolution. The term "facts", as used in the preceding sentence, includes, but is not limited to, the occurrence of any event, including a determination or action by any person or body, including the corporation. If the parent corporation is not the surviving corporation, the resolution shall include provision for the pro rata issuance of stock of the surviving corporation to the holders of the stock of the parent corporation on surrender of any certificates therefor, and the certificate of ownership and merger shall state that the proposed merger has been approved by a majority of the outstanding stock of the parent corporation entitled to vote thereon at a meeting thereof duly called and held after twenty (20) days' notice of the purpose of the meeting is mailed to each shareholder at the shareholder's address as it appears on the records of the corporation if the parent corporation is a corporation of this state or state that the proposed merger has been adopted, approved, certified, executed, and acknowledged by the parent corporation in accordance with the laws under which it is organized if the parent corporation is not a corporation of this state. If the surviving corporation exists under the laws of the District of Columbia or any state other than this state, the provisions of subsection D of Section 1082 of this title shall also apply to a merger pursuant to the provisions of this section.

B. Subject to the provisions of paragraph 1 of subsection A of Section 1006 of this title, if the surviving corporation is an Oklahoma corporation, it may change its corporate name by the inclusion of a provision to that effect in the resolution of merger adopted by the directors of the parent corporation and set forth in the certificate of ownership and merger, and upon the effective date of the merger, the name of the corporation shall be changed.

C. The provisions of subsection D of Section 1081 of this title shall apply to a merger pursuant to the provisions of this section,

and the provisions of subsection E of Section 1081 of this title shall apply to a merger pursuant to the provisions of this section in which the surviving corporation is the subsidiary corporation and is a corporation of this state. For purposes of this subsection, references to "agreement of merger" in subsections D and E of Section 1081 of this title shall mean the resolution of merger adopted by the board of directors of the parent corporation. Any merger which effects any changes other than those authorized by the provisions of this section or made applicable by this subsection shall be accomplished in accordance with the provisions of Section 1081 or 1082 of this title. The provisions of Section 1091 of this title shall not apply to any merger effected pursuant to the provisions of this section, except as provided for in subsection D of this section.

D. In the event all of the stock of a subsidiary Oklahoma corporation party to a merger effected pursuant to the provisions of this section is not owned by the parent corporation immediately prior to the merger, the shareholders of the subsidiary Oklahoma corporation party to the merger shall have appraisal rights as set forth in Section 1091 of this title.

E. A merger may be effected pursuant to the provisions of this section although one or more of the corporate parties to the merger is a corporation organized under the laws of a jurisdiction other than one of the United States; provided, that the laws of that jurisdiction permit a corporation of that jurisdiction to merge with a corporation of another jurisdiction.

SECTION 12. AMENDATORY 18 O.S. 1991, Section 1084, as amended by Section 18, Chapter 422, O.S.L. 1998 (18 O.S. Supp. 1999, Section 1084), is amended to read as follows:

Section 1084.

MERGER OR CONSOLIDATION OF DOMESTIC NONSTOCK,

NOT FOR PROFIT CORPORATIONS

A. Any two or more nonstock corporations of this state, whether or not organized for profit, may merge into a single corporation, which may be any one of the constituent corporations, or they may consolidate into a new nonstock corporation, whether or not organized for profit, formed by the consolidation, pursuant to an agreement of merger or consolidation, as the case may be, complying and approved in accordance with the provisions of this section.

B. 1. The governing body of each corporation which desires to merge or consolidate shall adopt a resolution approving an agreement of merger or consolidation. The agreement shall state:

a. the terms and conditions of the merger or consolidation,

b. the mode of carrying the same into effect,

c. other provisions or facts required or permitted by the Oklahoma General Corporation Act to be stated in a certificate of incorporation for nonstock corporations as can be stated in the case of a merger or consolidation, stated in an altered form as the circumstances of the case require,

d. the manner of converting the memberships of each of the constituent corporations into memberships of the corporation surviving or resulting from the merger or consolidation, and

e. other details or provisions as are deemed desirable.

2. Any of the terms of the agreement of merger or consolidation may be made dependent upon facts ascertainable outside of the agreement; provided, that the manner in which the facts shall operate upon the terms of the agreement is clearly and expressly set forth in the agreement of merger or consolidation. The term "facts" as used in this paragraph, includes, but is not limited to, the occurrence of any event, including a determination or action by any person or body, including the corporation.

C. The agreement shall be submitted to the members of each constituent corporation who have the right to vote for the election of the members of the governing body of their corporation, at an annual or special meeting for the purpose of acting on the agreement. Notice of the time, place, and purpose of the meeting shall be mailed to each member of each corporation who has the right to vote for the election of the members of the governing body of the corporation, at the member's address as it appears on the records of the corporation at least twenty (20) days prior to the date of the meeting. The notice shall contain a copy of the agreement or a brief summary thereof, as the governing body shall deem advisable~~; provided, however, that the notice shall be effective only with respect to mergers or consolidations for which the notice of the members meeting to vote thereon has been mailed after November 1, 1988~~. At the meeting, the agreement shall be considered and a vote by ballot, in person or by proxy, taken for the adoption or rejection of the agreement. ~~Each member who has the right to vote for the election of the members of the governing body of the corporation shall be entitled to one vote.~~ If ~~the votes of two-thirds (2/3) of the total number~~ a majority of the voting power of voting members of each corporation shall be for the adoption of the agreement, that fact shall be certified on the agreement by the officer performing the duties ordinarily performed by the secretary or assistant secretary of a corporation. The agreement shall be executed, acknowledged and filed, and shall become effective, in accordance with the provisions of Section 1007 of this title. The provisions of paragraphs 1 through 6 of subsection C of Section 1081 of this title shall apply to a merger or consolidation under this section.

D. If, under the provisions of the certificate of incorporation of any one or more of the constituent corporations, there shall be no members who have the right to vote for the election of the

members of the governing body of the corporation other than the members of that body themselves, the agreement duly entered into as provided for in subsection B of this section shall be submitted to the members of the governing body of the corporation or corporations at a meeting thereof. Notice of the meeting shall be mailed to the members of the governing body in the same manner as is provided in the case of a meeting of the members of a corporation. If at the meeting two-thirds (2/3) of the total number of members of the governing body shall vote by ballot, in person, for the adoption of the agreement, that fact shall be certified on the agreement in the same manner as is provided in the case of the adoption of the agreement by the vote of the members of a corporation and thereafter the same procedure shall be followed to consummate the merger or consolidation.

E. The provisions of subsection E of Section 1081 of this title shall apply to a merger pursuant to the provisions of this section.

F. Nothing in this section shall be construed to authorize the merger of a charitable nonstock corporation into a nonstock corporation if the charitable nonstock corporation would thereby have its charitable status lost or impaired; but a nonstock corporation may be merged into a charitable nonstock corporation which shall continue as the surviving corporation.

SECTION 13. AMENDATORY 18 O.S. 1991, Section 1090.2, as last amended by Section 16, Chapter 421, O.S.L. 1999 (18 O.S. Supp. 1999, Section 1090.2), is amended to read as follows:

Section 1090.2

MERGER OR CONSOLIDATION OF DOMESTIC CORPORATION

AND BUSINESS ENTITY

A. Any one or more corporations of this state may merge or consolidate with one or more business entities, of this state or of any other state or states of the United States, or of the District of Columbia, unless the laws of the other state or states or the

District of Columbia forbid the merger or consolidation. A corporation or corporations and one or more business entities may merge with or into a corporation, which may be any one of the corporations, or they may merge with or into a business entity, which may be any one of the business entities, or they may consolidate into a new corporation or business entity formed by the consolidation, which shall be a corporation or business entity of this state or any other state of the United States, or the District of Columbia, which permits the merger or consolidation, pursuant to an agreement of merger or consolidation, as the case may be, complying and approved in accordance with this section. In addition, any one or more business entities formed under the laws of any jurisdiction other than one of the United States may merge or consolidate with one or more corporations existing under the laws of this state if the surviving or resulting corporation will be a corporation of this state and the laws under which the business entity or entities are formed permit a business entity of the jurisdiction to merge or consolidate with a corporation of another jurisdiction. As used in this section, "business entity" means a domestic or foreign partnership, whether general or limited, limited liability company, business trust, common law trust, ~~or~~ other unincorporated business or other commercial entity.

B. Each corporation and business entity merging or consolidating shall enter into a written agreement of merger or consolidation. The agreement shall state:

1. The terms and conditions of the merger or consolidation;

2. The mode of carrying the consolidation into effect;

3. The manner of converting the shares of stock of each such corporation and the ownership interests of each business entity into shares, ownership interests, or other securities of the entity surviving or resulting from the merger or consolidation, and if any shares of any corporation or any ownership interests of any business

entity are not to be converted solely into shares, ownership interests, or other securities of the entity surviving or resulting from the merger or consolidation, the cash, property, rights, or securities of any other rights or securities of any other corporation or entity which the holders of such shares or ownership interests are to receive in exchange for, or upon conversion of, the shares or ownership interests and the surrender of any certificates evidencing them, which cash, property, rights, or securities of any other corporation or entity may be in addition to or in lieu of shares, ownership interests or other securities of the entity surviving or resulting from the merger or consolidation; and

4. Other details or provisions as are deemed desirable including, but not limited to, a provision for the payment of cash in lieu of the issuance of fractional shares or interests of the surviving or resulting corporation or business entity. Any of the terms of the agreement of merger or consolidation may be made dependent upon facts ascertainable outside of the agreement; provided, that the manner in which such facts shall operate upon the terms of the agreement is clearly and expressly set forth in the agreement of merger or consolidation. The term "facts" as used in this paragraph, includes, but is not limited to, the occurrence of any event, including a determination or action by any person or body, including the corporation.

C. The agreement required by subsection B of this section shall be adopted, approved, certified, executed, and acknowledged by each of the corporations in the same manner as is provided in Section 1081 of this title and, in the case of the business entities, in accordance with their constituent agreements and in accordance with the laws of the ~~state~~ jurisdiction under which they are formed, as the case may be; provided, no holder of securities or an interest in a constituent entity who has not voted for or consented to the merger or consolidation shall be required to accept an interest in

the surviving or resulting business entity if acceptance would expose the holder to personal liability for the debts of the surviving business entity. The agreement shall be filed and recorded and shall become effective for all purposes of the laws of this state when and as provided in Section 1081 of this title with respect to the merger or consolidation of corporations of this state. In lieu of filing and recording the agreement of merger or consolidation, the surviving or resulting corporation or business entity may file a certificate of merger or consolidation, executed in accordance with Section 1007 of this title if the surviving or resulting entity is a corporation, or by a person authorized to act for the business entity, if the surviving or resulting entity is a business entity, which states:

1. The name and ~~state of domicile~~ jurisdiction of formation of each of the constituent entities;

2. That an agreement of merger or consolidation has been approved, adopted, certified, executed, and acknowledged by each of the constituent entities in accordance with this subsection;

3. The name of the surviving or resulting corporation or business entity;

4. In the case of a merger in which a corporation is the surviving entity, any amendments or changes in the certificate of incorporation of the surviving corporation as are desired to be effected by the merger, or, if no amendments or changes are desired, a statement that the certificate of incorporation of the surviving corporation shall be its certificate of incorporation;

5. In the case of a consolidation in which a corporation is the resulting entity, that the certificate of incorporation of the resulting corporation shall be as set forth in an attachment to the certificate;

6. In the case of a consolidation in which a business entity other than a corporation is the resulting entity, that the charter

of the resulting entity shall be as set forth in an attachment to the certificate;

7. That the executed agreement of consolidation or merger is on file at the principal place of business of the surviving corporation or business entity and the address thereof;

8. That a copy of the agreement of consolidation or merger shall be furnished by the surviving or resulting entity, on request and without cost, to any shareholder of any constituent corporation or any partner of any constituent business entity; and

9. The agreement, if any, required by subsection D of this section.

D. If the entity surviving or resulting from the merger or consolidation is to be governed by the laws of the District of Columbia or any state other than this state, the entity shall agree that it may be served with process in this state in any proceeding for enforcement of any obligation of any constituent corporation or business entity of this state, as well as for enforcement of any obligation of the surviving or resulting corporation or business entity arising from the merger or consolidation, including any suit or other proceeding to enforce the right of any shareholders as determined in appraisal proceedings pursuant to the provisions of Section 1091 of this title, and shall irrevocably appoint the Secretary of State as its agent to accept service of process in any such suit or other proceedings and shall specify the address to which a copy of any process shall be mailed by the Secretary of State. In the event of service upon the Secretary of State pursuant to this subsection, the Secretary of State shall forthwith notify the surviving or resulting corporation or business entity by a letter, sent by certified mail with return receipt requested, directed to the surviving or resulting corporation or business entity at its specified address, unless the surviving or resulting corporation or business entity shall have designated in writing to

the Secretary of State a different address for that purpose, in which case it shall be mailed to the last address designated. Such letter shall enclose a copy of the process and any other papers served on the Secretary of State pursuant to this subsection. It shall be the duty of the plaintiff in the event of any service to serve process and any other papers in duplicate, to notify the Secretary of State that service is being effected pursuant to this subsection and to pay the Secretary of State the fee provided for in paragraph 7 of subsection A of Section 1142 of this title, which fee shall be taxed as part of the costs in the proceeding, if the plaintiff shall prevail therein. The Secretary of State shall maintain an alphabetical record of any such service, setting forth the name of the plaintiff and the defendant, the title, docket number, and nature of the proceeding in which process has been served upon the Secretary of State, the fact that service has been served upon the Secretary of State, the fact that service has been effected pursuant to this subsection, the return date thereof, and the date service was made. The Secretary of State shall not be required to retain this information longer than five (5) years from the date of receipt of the service of process by the Secretary of State.

E. Subsections C, D, E, F and G of Section 1081 of this title and Sections 1088 through 1090 and 1127 of this title, insofar as they are applicable, shall apply to mergers or consolidations between corporations and business entities.

SECTION 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1090.4 of Title 18, unless there is created a duplication in numbering, reads as follows:

A. As used in this section, the term “business entity” means a domestic or foreign partnership, whether general or limited, limited liability company, business trust, common law trust, other unincorporated association, or other commercial entity.

B. Any business entity may convert to a corporation incorporated under the laws of this state by complying with subsection G of this section and filing in the office of the Secretary of State:

1. A certificate of conversion that has been executed in accordance with subsection H of this section and filed in accordance with Section 1007 of Title 18 of the Oklahoma Statutes; and

2. A certificate of incorporation that has been executed, acknowledged and filed in accordance with Section 1007 of Title 18 of the Oklahoma Statutes.

C. The certificate of conversion shall state:

1. The date on which the business entity was first formed;

2. The name of the business entity immediately prior to the filing of the certificate of conversion;

3. The name of the corporation as set forth in its certificate of incorporation filed in accordance with subsection B of this section; and

4. The future effective date or time (which shall be a date or time certain) of the conversion to a corporation if the conversion is not to be effective upon the filing of the certificate of conversion and the certificate of incorporation provides for the same future effective date as authorized in subsection D of Section 1007 of Title 18 of the Oklahoma Statutes.

D. Upon the effective time of the certificate of conversion and the certificate of incorporation, the business entity shall be converted into a corporation of this state and the corporation shall thereafter be subject to all of the provisions of this title, except that notwithstanding Section 1007 of Title 18 of the Oklahoma Statutes, the existence of the corporation shall be deemed to have commenced on the date the business entity commenced its existence.

E. The conversion of any business entity into a corporation of this state shall not be deemed to affect any obligations or

liabilities of the business entity incurred prior to its conversion to a corporation of this state or the personal liability of any person incurred prior to the conversion.

F. Unless otherwise agreed or otherwise provided by any laws of this state applicable to the converting business entity, the converting business entity shall not be required to wind up its affairs or pay its liabilities and distribute its assets, and the conversion shall not be deemed to constitute a dissolution of the business entity and shall constitute a continuation of the existence of the converting business entity in the form of a corporation of this state.

G. Prior to filing a certificate of conversion with the office of the Secretary of State, the conversion shall be approved in the manner provided for by the document, instrument, agreement or other writing, as the case may be, governing the internal affairs of the business entity and the conduct of its business or by applicable law, as appropriate, and a certificate of incorporation shall be approved by the same authorization required to approve the conversion.

H. The certificate of conversion shall be signed by an officer, director, trustee, manager, partner, or other person performing functions equivalent to those of an officer or director of a corporation of this state, however named or described, and who is authorized to sign the certificate of conversion on behalf of the business entity.

SECTION 15. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1090.5 of Title 18, unless there is created a duplication in numbering, reads as follows:

A. 1. A corporation of this state may, upon the authorization of a conversion in accordance with this section, convert to another form of business entity.

2. As used in this section, the term “business entity” means a domestic partnership, whether general or limited, limited liability company, business trust, common law trust, other unincorporated association, or other commercial entity.

B. The board of directors of the corporation which desires to convert under this section shall adopt a resolution approving the conversion, specifying the type of business entity into which the corporation shall be converted and recommending the approval of the conversion by the shareholders of the corporation. The resolution shall be submitted to the shareholders of the corporation at an annual or special meeting. Due notice of the time and purpose of the meeting shall be mailed to each holder of shares of the corporation, whether voting or nonvoting, at the address of the shareholder as it appears on the records of the corporation, at least twenty (20) days prior to the date of the meeting. At the meeting, the resolution shall be considered and a vote taken for its adoption or rejection. If all outstanding shares of stock of the corporation, whether voting or nonvoting, shall be voted for the adoption of the resolution, the corporation shall file with the Secretary of State a certificate of conversion executed in accordance with Section 1007 of Title 18 of the Oklahoma Statutes, which certifies:

1. The name of the corporation, and if it has been changed, the name under which it was originally incorporated;

2. The date of filing of its original certificate of incorporation with the Secretary of State;

3. The name of the business entity into which the corporation shall be converted;

4. That the conversion has been approved in accordance with the provisions of this section; and

5. If the business entity into which the corporation is converting was required to make a filing with the Secretary of State as a condition of its formation, the type and date of the filing.

C. Upon the filing of a certificate of conversion in accordance with subsection B of this section and payment to the Secretary of State of all fees prescribed under this title, the Secretary of State shall certify that the corporation has filed all documents and paid all fees required by this title, and thereupon the corporation shall cease to exist as a corporation of this state at the time the certificate of conversion becomes effective in accordance with Section 1007 of Title 18 of the Oklahoma Statutes. The certificate of the Secretary of State shall be prima facie evidence of the conversion by the corporation.

D. The conversion of a corporation pursuant to a certificate of conversion under this section shall not be deemed to affect any obligations or liabilities of the corporation incurred prior to the conversion or the personal liability of any person incurred prior to the conversion.

E. After the time the certificate of conversion becomes effective the corporation shall continue to exist as a business entity of this state, and the laws of this state shall apply to the entity to the same extent as prior to that time.

F. Unless otherwise provided in a resolution of conversion adopted in accordance with this section, the converting corporation shall not be required to wind up its affairs or pay its liabilities and distribute its assets, and the conversion shall not constitute a dissolution of the corporation and shall constitute a continuation of the existence of the converting corporation in the form of the applicable business entity of this state.

SECTION 16. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2012.1 of Title 18, unless there is created a duplication in numbering, reads as follows:

A. The articles of organization shall be canceled upon the dissolution and the completion of winding up of a limited liability company, as provided in subsection B of this section, upon the filing of a certificate of merger or consolidation if the limited liability company is not the surviving or resulting entity in a merger or consolidation, or upon the conversion of a domestic limited liability company approved in accordance with Section 2054.2 of Title 18 of the Oklahoma Statutes.

B. The articles of organization of a domestic limited liability company shall be deemed to be canceled if the domestic limited liability company shall fail to pay the annual tax provided in Section 21 of this act or a registered agent fee to the Secretary of State due under Section 2055 of Title 18 of the Oklahoma Statutes for a period of three (3) years from the date it is due, the cancellation to be effective on the third anniversary of the due date.

C. On or before October 31 of each calendar year, the Secretary of State shall publish once in at least one newspaper of general circulation in this state a list of those domestic limited liability companies whose articles of organization were canceled on July 1 of the calendar year pursuant to this section.

SECTION 17. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2054.1 of Title 18, unless there is created a duplication in numbering, reads as follows:

A. As used in this section, the term "business entity" means a domestic corporation, partnership, whether general or limited, business trust, common law trust, other unincorporated association, or other commercial entity.

B. Any business entity may convert to a domestic limited liability company by complying with subsection H of this section and filing in the office of the Secretary of State in accordance with Section 2007 of Title 18 of the Oklahoma Statutes:

1. Articles of conversion to a limited liability company that has been executed in accordance with Section 2006 of Title 18 of the Oklahoma Statutes; and

2. Articles of organization which comply with Sections 2005 and 2008 of Title 18 of the Oklahoma Statutes and which have been executed by one or more authorized persons in accordance with Section 2006 of Title 18 of the Oklahoma Statutes.

C. The articles of conversion to a limited liability company shall state:

1. The date on which the business entity was first formed;

2. The name of the business entity immediately prior to the filing of the articles of conversion to a limited liability company; and

3. The name of the limited liability company as set forth in its articles of organization filed in accordance with subsection B of this section.

D. Upon the filing of the articles of conversion to a limited liability company and the articles of organization of the limited liability company in the office of the Secretary of State, the business entity shall be converted into a domestic limited liability company and the limited liability company shall thereafter be subject to all of the provisions of this act, except that, notwithstanding Section 2004 of Title 18 of the Oklahoma Statutes, the existence of the limited liability company shall be deemed to have commenced on the date the business entity was formed.

E. The conversion of any business entity into a domestic limited liability company shall not be deemed to affect any obligations or liabilities of the business entity incurred prior to its conversion to a domestic limited liability company or the personal liability of any person incurred prior to the conversion.

F. When any conversion shall have become effective under this section, for all purposes of the laws of this state, all of the

rights, privileges, and powers of the business entity that has converted, and all property, real, personal and mixed, and all debts due to the business entity, as well as all other things and causes of action belonging to the business entity, shall be vested in the domestic limited liability company and shall thereafter be the property of the domestic limited liability company as they were of the business entity that has converted, and the title to any real property vested by deed or otherwise in the business entity shall not revert or be in any way impaired by reason of this act, but all rights of creditors and all liens upon any property of the business entity shall be preserved unimpaired, and all debts, liabilities, and duties of the business entity that has converted shall then attach to the domestic limited liability company and may be enforced against it to the same extent as if the debts, liabilities, and duties had been incurred or contracted by it.

G. Unless otherwise agreed or otherwise provided by any laws of this state applicable to the converting business entity, the converting business entity shall not be required to wind up its affairs or pay its liabilities and distribute its assets, and the conversion shall not be deemed to constitute a dissolution of the business entity and shall constitute a continuation of the existence of the converting business entity in the form of a domestic limited liability company. When a business entity has been converted to a limited liability company pursuant to this section, the limited liability company shall, for all purposes of the laws of this state, be deemed to be the same entity as the converting business entity.

H. Prior to filing articles of conversion to a limited liability company with the office of the Secretary of State, the conversion shall be approved in the manner provided for by the document, instrument, agreement, or other writing, as the case may be, governing the internal affairs of the business entity and the conduct of its business or by applicable law, as appropriate and an

operating agreement shall be approved by the same authorization required to approve the conversion.

SECTION 18. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2054.2 of Title 18, unless there is created a duplication in numbering, reads as follows:

A domestic limited liability company may convert to a corporation, partnership, whether general or limited, business trust, common law trust, or other unincorporated association organized, formed or created under the laws of this state, upon the authorization of the conversion in accordance with this section. If the operating agreement specifies the manner of authorizing a conversion of the limited liability company, the conversion shall be authorized as specified in the operating agreement. If the operating agreement does not specify the manner of authorizing a conversion of the limited liability company and does not prohibit a conversion of the limited liability company, the conversion shall be authorized in the same manner as is specified in the operating agreement for authorizing a merger or consolidation that involves the limited liability company as a constituent party to the merger or consolidation. If the operating agreement does not specify the manner of authorizing a conversion of the limited liability company or a merger or consolidation that involves the limited liability company as a constituent party and does not prohibit a conversion of the limited liability company, the conversion shall be authorized by the approval by the members or, if there is more than one class or group of members, then by each class or group of members, in either case, by members who own more than fifty percent (50%) of the then current percentage or other interest in the profits of the domestic limited liability company owned by all of the members or by the members in each class or group, as appropriate. Notwithstanding the foregoing, in addition to any other authorization required by this section, if the entity into which the limited liability company is

to convert does not afford all of its interest-holders protection against personal liability for the debts of the entity, the conversion must be authorized by any and all members who would be exposed to personal liability.

SECTION 19. AMENDATORY Section 56, Chapter 148, O.S.L. 1992, as last amended by Section 19, Chapter 382, O.S.L. 1994 (18 O.S. Supp. 1999, Section 2055), is amended to read as follows:

Section 2055. A. The Secretary of State shall charge and collect the following fees:

1. For filing the original articles of organization, a fee of One Hundred Dollars ($100.00);

2. For filing amended, corrected or restated articles of organization, a fee of Fifty Dollars ($50.00);

3. For filing articles of merger or consolidation and issuing a certificate of merger or consolidation or filing articles of conversion, a fee of One Hundred Dollars ($100.00);

4. For filing articles of dissolution and issuing a certificate of cancellation, a fee of Fifty Dollars ($50.00);

5. For filing a certificate of correction of statements in an application for registration of a foreign limited liability company, a fee of One Hundred Dollars ($100.00);

6. For issuing a certificate for any purpose whatsoever, a fee of Ten Dollars ($10.00);

7. For filing an application for reservation of a name, or for filing a notice of the transfer or cancellation of any name reservation, a fee of Ten Dollars ($10.00);

8. For filing a statement of change of address of the principal office or resident agent, or both, or the resignation of a resident agent, a fee of Twenty-five Dollars ($25.00);

9. For filing an application for registration as a foreign limited liability company, a fee of Three Hundred Dollars ($300.00);

10. For filing an application of withdrawal as provided in Section 2047 of this title, a fee of One Hundred Dollars ($100.00);

11. For any service of notice, demand, or process upon the Secretary of State as resident agent of a limited liability company, a fee of Ten Dollars ($10.00), which amount may be recovered as taxable costs by the party to be sued, action, or proceeding causing such service to be made if such party prevails therein; and

12. For acting as the registered agent, a fee of Forty Dollars ($40.00) shall be paid on the first day of July each year to the office of the Secretary of State.

B. All fees shall be properly accounted for and shall be paid into the State Treasury monthly. All fees received by the Oklahoma Secretary of State pursuant to the provisions of this section shall be paid to the credit of the revolving fund for the Office of the Secretary of State created pursuant to Section 276.1 of Title 62 of the Oklahoma Statutes.

SECTION 20. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2055.2 of Title 18, unless there is created a duplication in numbering, reads as follows:

A domestic or foreign limited liability company for which the Secretary of State acts as the registered agent that fails to pay the registered agent fee by the due date as provided in paragraph 12 of Section 2055 of Title 18 of the Oklahoma Statutes shall be subject to the provisions of Sections 16 and 21 of this act.

SECTION 21. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2055.3 of Title 18, unless there is created a duplication in numbering, reads as follows:

A. For purposes of any tax imposed by this state or any instrumentality, agency, or political subdivision of this state, a limited liability company formed under this act or qualified to do business in this state as a foreign limited liability company shall be classified as a partnership unless classified otherwise for

federal income tax purposes, in which case the limited liability company shall be classified in the same manner as it is classified for federal income tax purposes. For purposes of any tax imposed by this state or any instrumentality, agency or political subdivision of this state, a member or an assignee of a member of a limited liability company formed under this act or qualified to do business in this state as a foreign limited liability company shall be treated as either a resident or nonresident partner unless classified otherwise for federal income tax purposes, in which case the member or assignee of a member shall have the same status as such member or assignee of a member has for federal income tax purposes.

B. Every domestic limited liability company and every foreign limited liability company registered to do business in this state shall pay an annual tax, for the use of this state, in the amount of Twenty-five Dollars ($25.00).

C. The annual tax shall be due and payable on the first day of July following the close of the calendar year until the cancellation of the articles of organization. The Secretary of State shall receive the annual tax and pay over all taxes collected to the credit of the revolving fund for the Office of the Secretary of State. If the annual tax remains unpaid after the due date, the tax shall bear interest at the rate of one and one-half percent (1 1/2%) for each month or portion thereof until fully paid.

D. The Secretary of State shall, at least sixty (60) days prior to the first day of July of each year, cause to be mailed to each domestic limited liability company and each foreign limited liability company required to comply with the provisions of this section in care of its registered agent in this state an annual statement for the tax to be paid hereunder and for any registered agent fees due to the Secretary of State.

E. In the event of neglect, refusal, or failure on the part of any domestic limited liability company or foreign limited liability company to pay the annual tax to be paid hereunder on or before the 1st day of July in any year, such domestic limited liability company or foreign limited liability company shall pay the sum of Twenty-five Dollars ($25.00) to be recovered by adding that amount to the annual tax. The additional sum shall become a part of the tax and shall be collected in the same manner and subject to the same penalties.

F. In case any domestic limited liability company or foreign limited liability company shall fail to pay the annual tax due within the time required by this section, and in case the agent in charge of the registered office of any domestic limited liability company or foreign limited liability company upon whom process against the domestic limited liability company or foreign limited liability company may be served shall die, resign, refuse to act as such, remove from this state or cannot with due diligence be found, it shall be lawful while default continues to serve process against such domestic limited liability company or foreign limited liability company upon the Secretary of State.

G. The annual tax or registered agent fee to the Secretary of State shall be a debt due from a domestic limited liability company or foreign limited liability company to this state, for which an action at law may be maintained after the same shall have been in arrears for a period of sixty (60) days from the due date. The tax shall also be a preferred debt in the case of insolvency.

H. A domestic limited liability company or foreign limited liability company that neglects, refuses, or fails to pay the annual tax within sixty (60) days after the date due shall cease to be in good standing as a domestic limited liability company or registered as a foreign limited liability company in this state.

I. Until cancellation, a domestic limited liability company that has ceased to be in good standing or a foreign limited liability company that has ceased to be registered by reason of the failure to pay an annual tax or registered agent fee to the Secretary of State shall be restored to and have the status of a domestic limited liability company in good standing or a foreign limited liability company that is registered in this state upon the payment of the annual tax or registered agent fee to the Secretary of State and all penalties and interest thereon for each year for which such domestic limited liability company or foreign limited liability company neglected, refused or failed to pay an annual tax or registered agent fee to the Secretary of State within three (3) years from the date it is due.

J. A domestic limited liability company that has ceased to be in good standing by reason of its neglect, refusal, or failure to pay an annual tax or registered agent fee to the Secretary of State shall remain a domestic limited liability company formed under this act until cancellation of its articles of organization. The Secretary of State shall not accept for filing any certificate or articles (except a certificate of resignation of a registered agent when a successor registered agent is not being appointed) required or permitted by this act to be filed in respect of any domestic limited liability company or foreign limited liability company which has neglected, refused, or failed to pay an annual tax, and shall not issue any certificate of good standing with respect to the domestic limited liability company or foreign limited liability company, unless or until the domestic limited liability company or foreign limited liability company shall have been restored to and have the status of a domestic limited liability company in good standing or a foreign limited liability company duly registered in this state.

K. A domestic limited liability company that has ceased to be in good standing or a foreign limited liability company that has ceased to be registered in this state by reason of its neglect, refusal, or failure to pay an annual tax or registered agent fee to the Secretary of State may not maintain any action, suit, or proceeding in any court of this state until the domestic limited liability company or foreign limited liability company has been restored to and has the status of a domestic limited liability company or foreign limited liability company in good standing or duly registered in this state. An action, suit, or proceeding may not be maintained in any court of this state by any successor or assignee of the domestic limited liability company or foreign limited liability company on any right, claim, or demand arising out the transaction of business by the domestic limited liability company after it has ceased to be in good standing or a foreign limited liability company that has ceased to be registered in this state until the domestic limited liability company or foreign limited liability company, or any person that has acquired all or substantially all of its assets, has paid any annual tax or registered agent fee to the Secretary of State then due and payable, together with penalties and interest thereon.

L. The neglect, refusal, or failure of a domestic limited liability company or foreign limited liability company to pay an annual tax or registered agent fee to the Secretary of State shall not impair the validity on any contract, deed, mortgage, security interest, lien or act of the domestic limited liability company or foreign limited liability company or prevent the domestic limited liability company or foreign limited liability company from defending any action, suit or proceeding with any court of this state.

M. A member or manager of a domestic limited liability company or foreign limited liability company is not liable for the debts,

obligations, or liabilities of the domestic limited liability company or foreign limited liability company solely by reason of the neglect, refusal, or failure of such domestic limited liability company or foreign limited liability company to pay an annual tax or registered agent fee to the Secretary of State or by reason of the domestic limited liability company or foreign limited liability company ceasing to be in good standing or duly registered.

SECTION 22. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 310.2 of Title 54, unless there is created a duplication in numbering, reads as follows:

A. As used in this section, the term "business entity" means a domestic corporation, general partnership, limited liability company, business trust, common law trust, or other unincorporated association.

B. Any business entity may convert to a domestic limited partnership by complying with subsection H of this section and filing in the office of the Secretary of State in accordance with Section 314 of Title 54 of the Oklahoma Statutes:

1. A certificate of conversion to limited partnership that has been executed in accordance with Section 312 of Title 54 of the Oklahoma Statutes; and

2. A certificate of limited partnership that complies with Section 309 of Title 54 of the Oklahoma Statutes and has been executed in accordance with Section 312 of Title 54 of the Oklahoma Statutes.

C. The certificate of conversion to limited partnership shall state:

1. The date on which the business entity was first formed;

2. The name of the business entity immediately prior to the filing of the certificate of conversion to limited partnership;

3. The name of the limited partnership as set forth in its certificate of limited partnership filed in accordance with subsection B of this section; and

4. The future effective date or time, which shall be a date or time certain, of the conversion to a limited partnership if it is not to be effective upon the filing of the certificate of conversion to limited partnership and the certificate of limited partnership.

D. Upon the filing in the Office of the Secretary of State of the certificate of conversion to limited partnership and the certificate of limited partnership or upon the future effective date or time of the certificate of conversion to limited partnership and the certificate of limited partnership, the business entity shall be converted into a domestic limited partnership and the limited partnership shall thereafter be subject to all of the provisions of this act, except that notwithstanding Section 309 of Title 54 of the Oklahoma Statutes, the existence of the limited partnership shall be deemed to have commenced on the date the business entity was formed.

E. The conversion of any business entity into a domestic limited partnership shall not be deemed to affect any obligations or liabilities of the business entity incurred prior to its conversion to a domestic limited partnership, or the personal liability of any person incurred prior to the conversion.

F. When any conversion shall have become effective under this section, for all purposes of the laws of this state, all of the rights, privileges, and powers of the business entity that has converted, and all property, real, personal and mixed, and all debts due to the business entity, as well as all other things and causes of action belonging to the business entity, shall be vested in the domestic limited partnership and shall thereafter be the property of the domestic limited partnership as they were of the business entity that has converted, and the title to any real property vested by deed or otherwise in the business entity shall not revert or be in

any way impaired by reason of this act; but all rights of creditors and all liens upon any property of the business entity shall be preserved unimpaired, and all debts, liabilities, and duties of the business entity that has converted shall then attach to the domestic limited partnership, and may be enforced against it to the same extent as if the debts, liabilities, and duties had been incurred or contracted by it.

G. Unless otherwise agreed or otherwise provided by any laws of this state applicable to the converting business entity, the converting business entity shall not be required to wind up its affairs or pay its liabilities and distribute its assets, and the conversion shall not be deemed to constitute a dissolution of the business entity and shall constitute a continuation of the existence of the converting business entity in the form of a domestic limited partnership. When a business entity has been converted to a limited partnership pursuant to this section, the limited partnership shall, for all purposes of the laws of this state, be deemed to be the same entity as the converting business entity.

H. Prior to filing a certificate of conversion to limited partnership with the Office of the Secretary of State, the conversion shall be approved in the manner provided for by the document, instrument, agreement, or other writing, as the case may be, governing the internal affairs of the business entity and the conduct of its business or by applicable law, as appropriate, and a partnership agreement shall be approved by the same authorization required to approve the conversion; provided, the approval shall include the approval of any person who, at the effective date or time of the conversion, shall be a general partner of the limited partnership.

SECTION 23. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 310.3 of Title 54, unless there is created a duplication in numbering, reads as follows:

A domestic limited partnership may convert to a corporation, general partnership, limited liability company, business trust, common law trust, or other unincorporated association organized, formed or created under the laws of this state, upon the authorization of the conversion in accordance with this section. If the partnership agreement specifies the manner of authorizing a conversion of the limited partnership, the conversion shall be authorized as specified in the partnership agreement. If the partnership agreement does not specify the manner of authorizing a conversion of the limited partnership and does not prohibit a conversion of the limited partnership, the conversion shall be authorized in the same manner as is specified in the partnership agreement for authorizing a merger or consolidation that involves the limited partnership as a constituent party to the merger or consolidation. If the partnership agreement does not specify the manner of authorizing a conversion of the limited partnership or a merger or consolidation that involves the limited partnership as a constituent party and does not prohibit a conversion of the limited partnership, the conversion shall be authorized by the approval (1) by all general partners, and (2) by the limited partners or, if there is more than one class or group of limited partners, then by each class or group of limited partners, in either case, by limited partners who own more than fifty percent (50%) of the then current percentage or other interest in the profits of the domestic limited partnership owned by all of the limited partners or by the limited partners in each class or group, as appropriate. Notwithstanding the foregoing, in addition to any other authorization required by this section, if the entity into which the limited partnership is to convert does not afford all of its interest-holders protection against personal liability for the debts of the entity, the conversion must be authorized by any and all partners who would be exposed to personal liability.

SECTION 24. AMENDATORY 54 O.S. 1991, Section 311, is amended to read as follows:

Section 311.

CANCELLATION OF CERTIFICATE

A. A certificate of limited partnership shall be canceled upon the dissolution and the commencement of winding up of the partnership ~~or~~, at any time there are no limited partners, as provided in subsection B of this section, upon the filing of a certificate of merger or consolidation if the limited partnership is not the surviving or resulting entity in a merger or consolidation, or upon the conversion of a domestic limited partnership approved in accordance with Section 23 of this act. The cancellation of the certificate of limited partnership shall not affect the limited liability of the limited partners nor the rights and responsibilities of the partners as set forth in this act, in the certificate of limited partnership or in the partnership agreement during the period of winding up and prior to termination of the partnership. A certificate of cancellation shall be filed in the Office of the Secretary of State to accomplish the cancellation of a certificate of limited partnership upon the dissolution of a limited partnership or upon the conversion of a domestic limited partnership approved in accordance with Section 23 of this act and shall set forth:

1. The name of the limited partnership;

2. The date of filing of its certificate of limited partnership;

3. The reason for filing the certificate of cancellation;

4. The effective date, which shall be a date certain, of cancellation if it is not to be effective upon the filing of the certificate; ~~and~~

5. The name of the entity to which the domestic limited partnership has been converted, in the case of the conversion of a domestic limited partnership; and

6. Any other information the general partners filing the certificate determine.

B. The certificate of limited partnership of a domestic limited partnership shall be canceled if the limited partnership fails to pay the annual tax provided in Section 25 of this act or the registered agent fee to the Secretary of State due under Section 350.1 of this title for a period of three (3) years from the date it is due, the cancellation to be effective on the third anniversary of the due date.

C. On or before October 31 of each calendar year, the Secretary of State shall publish in at least one newspaper of general circulation in this state a list of those domestic limited partnerships whose certificates of limited partnership were canceled on July 1 of that calendar year pursuant to subsection B of this section.

SECTION 25. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 311.1 of Title 54, unless there is created a duplication in numbering, reads as follows:

A. Every domestic limited partnership and every foreign limited partnership registered to do business in this state shall pay an annual tax, for the use of this state, in the amount of Twenty-five Dollars ($25.00).

B. The annual tax shall be due and payable on the 1st day of July following the close of the calendar year until the cancellation of a certificate of limited partnership. The Secretary of State shall receive the annual tax and pay over all taxes collected to the credit of the revolving fund for the Office of the Secretary of State. If the annual tax remains unpaid after the due date, the tax

shall bear interest at the rate of one and one-half percent (1 1/2%) for each month or portion thereof until fully paid.

C. The Secretary of State shall, at least sixty (60) days prior to the 1st day of July of each year, cause to be mailed to each domestic limited partnership and foreign limited partnership required to comply with the provisions of this section in care of its registered agent in this state an annual statement for the tax to be paid hereunder and for any registered agent fees due to the Secretary of State.

D. In the event of neglect, refusal, or failure on the part of any domestic limited partnership or foreign limited partnership to pay the annual tax to be paid hereunder on or before the 1st day of July in any year, the domestic limited partnership or foreign limited partnership shall pay the sum of Twenty-five Dollars ($25.00) to be recovered by adding that amount to the annual tax, and the additional sum shall become a part of the tax and shall be collected in the same manner and subject to the same penalties.

E. In case any domestic limited partnership or foreign limited partnership shall fail to pay the annual tax due within the time required by this section, and in case the agent in charge of the registered office of any domestic limited partnership or foreign limited partnership upon whom process against the domestic limited partnership or foreign limited partnership may be served shall die, resign, refuse to act as such, remove from this state or cannot with due diligence be found, it shall be lawful while default continues to serve process against the domestic limited partnership or foreign limited partnership upon the Secretary of State.

F. The annual tax or registered agent fee to the Secretary of State shall be a debt due from a domestic limited partnership or foreign limited partnership to this state, for which an action at law may be maintained after the same shall have been in arrears for

a period of sixty (60) days from the due date. The tax shall also be a preferred debt in the case of insolvency.

G. A domestic limited partnership or foreign limited partnership that neglects, refuses, or fails to pay the annual tax or registered agent fee to the Secretary of State within sixty (60) days after the date due shall cease to be in good standing as a domestic limited partnership or registered as a foreign limited partnership in this state.

H. Until cancellation, a domestic limited partnership that has ceased to be in good standing or a foreign limited partnership that has ceased to be registered by reason of the failure to pay an annual tax or registered agent fee to the Secretary of State shall be restored to and have the status of a domestic limited partnership in good standing or a foreign limited partnership that is registered in this state upon the payment of the annual tax or registered agent fee to the Secretary of State and all penalties and interest thereon for each year for which the domestic limited partnership or foreign limited partnership neglected, refused, or failed to pay an annual tax or registered agent fee within three (3) years from the date it is due.

I. A domestic limited partnership that has ceased to be in good standing by reason of its neglect, refusal, or failure to pay an annual tax or registered agent fee to the Secretary of State shall remain a domestic limited partnership formed under this act until cancellation of its certificate of limited partnership. The Secretary of State shall not accept for filing any certificate, except a certificate of resignation of a registered agent when a successor registered agent is not being appointed, required or permitted by this act to be filed in respect of any domestic limited partnership or foreign limited partnership which has neglected, refused, or failed to pay an annual tax, and shall not issue any certificate of good standing with respect to the domestic limited

partnership or foreign limited partnership, unless and until the domestic limited partnership or foreign limited partnership shall have been restored to and have the status of a domestic limited partnership in good standing or a foreign limited partnership duly registered in this state.

J. A domestic limited partnership that has ceased to be in good standing or a foreign limited partnership that has ceased to be registered in this state by reason of its neglect, refusal, or failure to pay an annual tax or registered agent fee to the Secretary of State may not maintain any action, suit, or proceeding in any court of this state until the domestic limited partnership or foreign limited partnership has been restored to and has the status of a domestic limited partnership or foreign limited partnership in good standing or duly registered in this state. An action, suit, or proceeding may not be maintained in any court of this state by any successor or assignee of the domestic limited partnership or foreign limited partnership on any right, claim, or demand arising out of the transaction of business by the domestic limited partnership after it has ceased to be in good standing or a foreign limited partnership that has ceased to be registered in this state until the domestic limited partnership or foreign limited partnership, or any person that has acquired all or substantially all of its assets, has paid any annual tax or registered agent fee to the Secretary of State then due and payable, together with penalties and interest thereon.

K. The neglect, refusal, or failure of a domestic limited partnership or foreign limited partnership to pay an annual tax or registered agent fee to the Secretary of State shall not impair the validity of any contract, deed, mortgage, security interest, lien or act of the domestic limited partnership or foreign limited partnership or prevent the domestic limited partnership or foreign

limited partnership from defending any action, suit, or proceeding in any court of this state.

L. A limited partner of a domestic limited partnership or foreign limited partnership is not liable as a general partner of the domestic limited partnership or foreign limited partnership solely by reason of the neglect, refusal, or failure of such domestic limited partnership or foreign limited partnership to pay an annual tax or registered agent fee to the Secretary of State or by reason of the domestic limited partnership or foreign limited partnership ceasing to be in good standing or duly registered.

SECTION 26. AMENDATORY 54 O.S. 1991, Section 314, is amended to read as follows:

Section 314.

FILING IN OFFICE OF SECRETARY OF STATE

A. Two signed copies of the certificate of limited partnership of any certificates of amendment, correction, or cancellation or of any judicial decree of amendment or cancellation, and of any certificate of merger or consolidation, any restated certificate, and any certificate of conversion to limited partnership shall be delivered to the Secretary of State. A person who executes a certificate as an agent or fiduciary need not exhibit evidence of ~~his~~ authority as a prerequisite to filing. Unless the Secretary of State finds that any certificate does not conform to law, upon receipt of all filing fees required by law ~~he~~, the Secretary of State shall:

1. Endorse on each duplicate original the word "Filed" and the day, month and year of the filing thereof;

2. File one duplicate original in ~~his office~~ the Office of the Secretary of State; and

3. Return the other duplicate original to the person who filed it or ~~his~~ the person's representative.

B. Upon the filing of a certificate of amendment or judicial decree of amendment in the Office of the Secretary of State, the certificate of limited partnership shall be amended as set forth therein and upon the effective date of a certificate of cancellation or a judicial decree of amendment, the certificate of limited partnership is canceled.

C. The following fees shall be paid to the Secretary of State:

1. For filing a certificate of limited partnership, a fee of One Hundred Dollars ($100.00); and

2. For filing an amendment to certificate of limited partnership or a certificate of cancellation, a fee of Fifty Dollars ($50.00).

SECTION 27. AMENDATORY Section 24, Chapter 69, O.S.L. 1996 (54 O.S. Supp. 1999, Section 350.1), is amended to read as follows:

Section 350.1

REGISTERED AGENT FEES

~~A. For acting~~ Each domestic and foreign limited partnership for which the Secretary of State acts as registered agent~~,~~ shall pay a fee of One Hundred Dollars ($100.00) ~~shall be paid~~ on or before the first day of July of each year to the Office of the Secretary of State for deposit in the General Revenue Fund of the State Treasury. Failure to pay the registered agent fee by the due date shall subject the limited partnership to the provisions of Section 311 of this title and Section 25 of this act.

~~B. A limited partnership may have its certificate of registration revoked by the Secretary of State and its authority to do business in this state canceled for failure to pay the registered agent fee prescribed by this section. Before such revocation the Secretary of State shall give not less than thirty (30) days' notice sent by mail duly addressed to such limited partnership at its principal place of business or last address shown on the records of~~

~~the Secretary of State of the Secretary of State's intent to revoke its authority to transact business in this state.~~

~~C. A limited partnership, after notice required by subsection B of this section, shall be subject to a penalty and shall forfeit to the state for each day it fails to comply with the provisions of this section, the sum of Twenty-five Dollars ($25.00) per day but not more than Five Hundred Dollars ($500.00) for each such offense.~~

~~D. The Secretary of State shall rescind such revocation and return the limited partnership to active status upon the records of the state at such time as the partnership tenders such penalties and any registered agent fees due within three (3) years of the date of the revocation, to the Secretary of State.~~

SECTION 28. AMENDATORY 68 O.S. 1991, Section 3202, as last amended by Section 2, Chapter 340, O.S.L. 1999 (68 O.S. Supp. 1999, Section 3202), is amended to read as follows:

Section 3202. The tax imposed by Section 3201 of this title shall not apply to:

1. Deeds recorded prior to the effective date of Sections 3201 through 3206 of this title;

2. Deeds which secure a debt or other obligation;

3. Deeds which, without additional consideration, confirm, correct, modify or supplement a deed previously recorded;

4. Deeds between husband and wife, or parent and child, or any persons related within the second degree of consanguinity, without actual consideration therefor, deeds between any person and an express revocable trust created by such person or such person’s spouse or deeds pursuant to which property is transferred from a person to a partnership, limited liability company or corporation of which the transferor or the transferor’s spouse, parent, child, or other person related within the second degree of consanguinity to the transferor<u>, or trusts for the primary benefit of such persons,</u> are the only owners of the partnership, limited liability company<u>,</u>

or corporation. However, if ~~the ownership of~~ any interest in the partnership, limited liability company, or corporation is ~~changed~~ transferred within one (1) year ~~of the property transfer~~ to any person other than the transferor or the transferor's spouse, parent, child, or other person related within the second degree of consanguinity to the transferor, the seller shall immediately pay the amount of tax which would have been due had this exemption not been granted;

5. Tax deeds;

6. Deeds of release of property which is security for a debt or other obligation;

7. Deeds executed by Indians in approval proceedings of the district courts or by the Secretary of the Interior;

8. Deeds of partition, unless, for consideration, some of the parties take shares greater in value than their undivided interests, in which event a tax attaches to each deed conveying such greater share computed upon the consideration for the excess;

9. Deeds made pursuant to mergers of partnerships, limited liability companies or corporations;

10. Deeds made by a subsidiary corporation to its parent corporation for no consideration other than the cancellation or surrender of the subsidiary's stock;

11. Deeds or instruments to which the State of Oklahoma or any of its instrumentalities, agencies or subdivisions is a party, whether as grantee or as grantor or in any other capacity;

12. Deeds or instruments to which the United States or any of its agencies or departments is a party, whether as grantor or as grantee or in any other capacity, provided that this shall not exempt transfers to or from national banks or federal savings and loan associations;

13. Any deed executed pursuant to a foreclosure proceeding in which the grantee is the holder of a mortgage on the property being

foreclosed, or any deed executed pursuant to a power of sale in which the grantee is the party exercising such power of sale or any deed executed in favor of the holder of a mortgage on the property in consideration for the release of the borrower from liability on the indebtedness secured by such mortgage except as to cash consideration paid; provided, however, the tax shall apply to deeds in other foreclosure actions, unless otherwise hereinabove exempted, and shall be paid by the purchaser in such foreclosure actions; or

14. Deeds and other instruments to which the Oklahoma Space Industry Development Authority or a spaceport user, as defined in the Oklahoma Space Industry Development Act, is a party.

SECTION 29. REPEALER 15 O.S. 1991, Sections 218 and 219, are hereby repealed.

SECTION 30. REPEALER Section 15, Chapter 69, O.S.L. 1996 (18 O.S. Supp. 1999, Section 2055.1), is hereby repealed.

SECTION 31. This act shall become effective November 1, 2000.

Passed the Senate the 13th day of March, 2000.

_____
President of the Senate

Passed the House of Representatives the ____ day of _____, 2000.

_____
Speaker of the House of Representatives