STATE OF OKLAHOMA

1st Session of the 50th Legislature (2005)

COMMITTEE SUBSTITUTE
FOR
SENATE BILL 560 By: Crain

COMMITTEE SUBSTITUTE

An Act relating to corporations; amending 18 O.S. 2001, Sections 1006, as amended by Section 2, Chapter 255, O.S.L. 2004, 1024, 1027, as amended by Section 7, Chapter 255, O.S.L. 2004, 1033, 1035, 1038, as amended by Section 8, Chapter 255, O.S.L. 2004, 1081, as amended by Section 20, Chapter 255, O.S.L. 2004, 1082, as amended by Section 21, Chapter 255, O.S.L. 2004, 1090.2, as amended by Section 26, Chapter 255, O.S.L. 2004, 1090.4, 1090.5, as amended by Section 28, Chapter 255, O.S.L. 2004, 1118, 2002, as amended by Section 10, Chapter 180, O.S.L. 2003, 2005, as amended by Section 34, Chapter 255, O.S.L. 2004, 2007, as amended by Section 36, Chapter 255, O.S.L. 2004, 2010, as amended by Section 37, Chapter 255, O.S.L. 2004, 2037, as amended by Section 48, Chapter 255, O.S.L. 2004, 2054.1, as amended by Section 52, Chapter 255, O.S.L. 2004, 2054.2, as amended by Section 53, Chapter 255, O.S.L. 2004, and 2055.2 (18 O.S. Supp. 2004, Sections 1006, 1027, 1038, 1081, 1082, 1090.2, 1090.5, 2002, 2005, 2007, 2010, 2037, 2054.1 and 2054.2), which relate to the Oklahoma General Corporation Act and the Oklahoma Limited Liability Company Act; allowing inclusion of certain provisions in certificates of incorporation; defining term; permitting certain changes to be made in single filing; clarifying authority of certain committee; updating reference; broadening permitted forms of certain consideration; conforming language; modifying certain time periods; clarifying form of certain amendments; expanding certain definition; requiring conversion notice under specified circumstances; clarifying applicability of certain federal law; clarifying continuance of certain company; permitting conversion of certain business entities; amending 54 O.S. 2001, Sections 1-901, as amended by Section 56, Chapter 255, O.S.L. 2004, 1-903, as amended by Section 58, Chapter 255, O.S.L. 2004, 1-904, as amended by Section 59, Chapter 255, O.S.L. 2004, 302, 310.1, 310.2, as amended by Section 61, Chapter 255, O.S.L. 2004, 310.3, as amended by Section 62, Chapter 255, O.S.L. 2004, and 311.1 (54 O.S. Supp. 2004, Sections 1-901, 1-903, 1-904, 310.2 and 310.3), which relate to the Oklahoma Revised Uniform Partnership Act and the Oklahoma Revised Uniform Limited Partnership Act; modifying definitions; requiring certain filing for conversion of certain business entities; establishing consent of certain business entities to specified jurisdiction and service of

process; modifying requirements for filing certain certificates; and providing an effective date.

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

SECTION 1. AMENDATORY 18 O.S. 2001, Section 1006, as amended by Section 2, Chapter 255, O.S.L. 2004 (18 O.S. Supp. 2004, 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 abbreviations thereof, with or without punctuation, or words or abbreviations thereof, with or without punctuation, of like import of foreign countries or jurisdictions; provided that such abbreviations are 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, whether domestic or foreign, then existing or which existed at any time during the preceding three (3) years,

b. names of partnerships whether general or limited, or domestic or foreign, then existing or which existed at any time during the preceding three (3) years,

c. names of limited liability companies, whether domestic or foreign, then existing or which existed at any time during the preceding three (3) years,

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;

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 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, and by such 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, 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. If the corporation is not for profit:

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

b. the name and mailing address of each trustee or director,

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

d. in the event the corporation is a church, the street address of the location of the church.

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 regulating the powers of the corporation, the directors, and 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, 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 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 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 the shareholders or class of shareholders, of this corporation, as the case may be, and also on this corporation.";

3. Such provisions as may be desired 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 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 this 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 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 provision shall not eliminate or limit the liability of a director:

a. for any breach of the director's duty of loyalty to the corporation or its shareholders,

b. for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law,

c. under Section 1053 of this title, or

d. for any transaction from which the director derived an improper personal benefit.

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

D. Except for provisions included pursuant to paragraphs 1, 2, 5 and 6 of subsection A and paragraphs 2, 5 and 7 of subsection B of this section, and provisions included pursuant to paragraph 4 of subsection A of this section specifying the classes, number of shares, and par value of shares the corporation is authorized to issue, any provision of the certificate of incorporation may be made dependent upon facts ascertainable outside such instrument, provided that the manner in which such facts shall operate upon the provision is clearly and explicitly set forth therein. The term "facts", as used in this subsection, includes, but is not limited to, the occurrence of any event, including a determination or action by any person or body, including the corporation.

SECTION 2. AMENDATORY 18 O.S. 2001, Section 1024, is amended to read as follows:

Section 1024.

CHANGE OF ADDRESS OR NAME OF REGISTERED AGENT

A. A registered agent may change the address of the registered office of the corporation or corporations for which he or she is the registered agent to another address in this state by filing with the Secretary of State a certificate in the name of each affected corporation, executed and acknowledged by the registered agent, setting forth the ~~name of the corporation represented by the registered agent, the new address to which the registered office will be changed at which the registered agent will maintain the registered office for the corporation recited in the certificate~~ address at which the registered agent has maintained the registered office, and further certifying to the new address to which the registered office will be changed on a given day, and at which new address the registered agent will thereafter maintain the registered

office. Thereafter, or until further change of address, as authorized by law, the registered office in this state shall be located at the new address of the registered agent thereof as given in the certificate.

B. In the event of a change of name of any person or corporation acting as registered agent in this state, the registered agent shall file with the Secretary of State a certificate in the name of each affected corporation, executed and acknowledged by the registered agent, setting forth the new name of the registered agent, the name of the registered agent before it was changed, ~~the name of the corporation represented by the registered agent, and the address of the registered office for the corporation~~ and the address at which such registered agent has maintained the registered office for the affected corporation. A change of name of any person or corporation acting as a registered agent as a result of a merger or consolidation of the registered agent, with or into another person or corporation which succeeds to its assets by operation of law, shall be deemed a change of name for purposes of this section.

SECTION 3. AMENDATORY 18 O.S. 2001, Section 1027, as amended by Section 7, Chapter 255, O.S.L. 2004 (18 O.S. Supp. 2004, Section 1027), is amended to read as follows:

Section 1027.

BOARD OF DIRECTORS; POWERS; NUMBER; QUALIFICATIONS; TERMS AND QUORUM; COMMITTEES; CLASSES OF DIRECTORS; NOT FOR PROFIT CORPORATIONS; RELIANCE UPON BOOKS; ACTION WITHOUT MEETING; ETC.

A. The business and affairs of every corporation organized in accordance with the provisions of the Oklahoma General Corporation Act shall be managed by or under the direction of a board of directors, except as may be otherwise provided for in this act or in the corporation's certificate of incorporation. If any provision is made in the certificate of incorporation, the powers and duties conferred or imposed upon the board of directors by the provisions

of this act shall be exercised or performed to the extent and by the person or persons stated in the certificate of incorporation.

B. The board of directors of a corporation shall consist of one or more members, each of whom shall be a natural person. The number of directors shall be fixed by or in the manner provided for in the bylaws, unless the certificate of incorporation fixes the number of directors, in which case a change in the number of directors shall be made only by amendment of the certificate. Directors need not be shareholders unless so required by the certificate of incorporation or the bylaws. The certificate of incorporation or bylaws may prescribe other qualifications for directors. Each director shall hold office until a successor is elected and qualified or until his or her earlier resignation or removal. Any director may resign at any time upon notice given in writing or by electronic transmission to the corporation. A majority of the total number of directors shall constitute a quorum for the transaction of business unless the certificate of incorporation or the bylaws require a greater number. Except as provided in subsection G of this section, neither the certificate of incorporation nor the bylaws may provide that a quorum may be less than one-third (1/3) of the total number of directors. The vote of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors unless the certificate of incorporation or the bylaws shall require a vote of a greater number.

C. 1. The board of directors may designate one or more committees consisting of one or more of the directors of the corporation. The board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. The bylaws may provide that in the absence or disqualification of a member of a committee, the member or members present at a meeting and not disqualified from voting, whether or not the member or members

constitute a quorum, may unanimously appoint another member of the board of directors to act at the meeting in the place of any absent or disqualified member. Any committee, to the extent provided in the resolution of the board of directors, or in the bylaws of the corporation, shall have and may exercise all the powers and authority of the board of directors in the management of the business and affairs of the corporation, and may authorize the seal of the corporation to be affixed to all papers which may require it; but no committee shall have the power or authority to:

a. approve, adopt, or recommend to the shareholders any action or matter, other than the election or removal of directors, expressly required by this act to be submitted to shareholders for approval, or

b. adopt, amend, or repeal any bylaw of the corporation.

2. Unless otherwise provided in the certificate of incorporation, the bylaws or the resolution of the board of directors designating the committee, a committee may create one or more subcommittees, each subcommittee to consist of one or more members of the committee, and delegate to a subcommittee any or all of the powers and authority of the committee.

D. The directors of any corporation organized in accordance with the provisions of this act, by the certificate of incorporation or by an initial bylaw, or by a bylaw adopted by the board of directors and approved by a vote of the shareholders, may be divided into one, two, or three classes; the term of office of those of the first class to expire at the annual meeting next ensuing; of the second class one (1) year thereafter; of the third class two (2) years thereafter; and at each annual election held after classification and election, directors shall be chosen for a full term, as the case may be, to succeed those whose terms expire. The certificate of incorporation may confer upon holders of any class or series of stock the right to elect one or more directors who shall

serve for the term, and have voting powers as shall be stated in the certificate of incorporation. The terms of office and voting powers of the directors elected in the manner so provided in the certificate of incorporation may be greater than or less than those of any other director or class of directors. If the certificate of incorporation provides that directors elected by the holders of a class or series of stock shall have more or less than one vote per director on any matter, every reference in this act to a majority or other proportion of directors shall refer to a majority or other proportion of the votes of the directors.

E. A member of the board of directors, or a member of any committee designated by the board of directors, in the performance of the member's duties, shall be fully protected in relying in good faith upon the records of the corporation and upon information, opinions, reports, or statements presented to the corporation by any of the corporation's officers or employees, or committees of the board of directors, or by any other person as to matters the member reasonably believes are within the officer's, employee's, committee's or other person's competence and who have been selected with reasonable care by or on behalf of the corporation.

F. Unless otherwise restricted by the certificate of incorporation or bylaws:

1. Any action required or permitted to be taken at any meeting of the board of directors, or of any committee thereof may be taken without a meeting if all members of the board or committee, as the case may be, consent thereto in writing or by electronic transmission, and the writing or writings or electronic transmission or transmissions are filed with the minutes of proceedings of the board or committee; and the filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form;

2. The board of directors of any corporation organized in accordance with the provisions of this act may hold its meetings, and have an office or offices, outside of this state;

3. The board of directors shall have the authority to fix the compensation of directors; and

4. Members of the board of directors of any corporation, or any committee designated by the board, may participate in a meeting of the board or committee by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear or otherwise communicate with each other. Participation in a meeting pursuant to the provisions of this subsection shall constitute presence in person at the meeting.

G. 1. The certificate of incorporation of any corporation organized in accordance with the provisions of this act which is not authorized to issue capital stock may provide that less than one-third (1/3) of the members of the governing body may constitute a quorum thereof and may otherwise provide that the business and affairs of the corporation shall be managed in a manner different from that provided for in this section.

2. Except as may be otherwise provided by the certificate of incorporation, the provisions of this section shall apply to such a corporation, and when so applied, all references to the board of directors, to members thereof, and to shareholders shall be deemed to refer to the governing body of the corporation, the members thereof and the members of the corporation, respectively.

H. 1. Any director or the entire board of directors may be removed, with or without cause, by the holders of a majority of the shares then entitled to vote at an election of directors, except as follows:

a. unless the certificate of incorporation otherwise provides, in the case of a corporation whose board is classified as provided for in subsection D of this

section, shareholders may effect such removal only for cause, or

b. in the case of a corporation having cumulative voting, if less than the entire board is to be removed, no director may be removed without cause if the votes cast against the director's removal would be sufficient to elect the director if then cumulatively voted at an election of the entire board of directors, or, if there are classes of directors, at an election of the class of directors of which the director is a part.

2. Whenever the holders of any class or series are entitled to elect one or more directors by the provisions of the certificate of incorporation, the provisions of this subsection shall apply, in respect to the removal without cause of a director or directors so elected, to the vote of the holders of the outstanding shares of that class or series and not to the vote of the outstanding shares as a whole.

I. A corporation may agree to submit a matter to a vote of its shareholders regardless of whether the board of directors determines at any time subsequent to approving the matter that the matter is no longer advisable and recommends that the shareholders reject or vote against the matter.

SECTION 4. AMENDATORY 18 O.S. 2001, Section 1033, is amended to read as follows:

Section 1033.

ISSUANCE OF STOCK, LAWFUL CONSIDERATION; FULLY PAID STOCK

A. The consideration, as determined pursuant to the provisions of subsections A and B of Section ~~34~~ 1034 of this ~~act~~ title, for subscriptions to, or the purchase of, the capital stock to be issued by a corporation shall be paid in such form and in such manner as the board of directors shall determine. The board of directors may

authorize capital stock to be issued for consideration consisting of cash, any tangible or intangible property or any benefit to the corporation, or any combination thereof, except for services to be performed. In the absence of actual fraud in the transaction, the judgment of the directors as to the value of such consideration shall be conclusive. The capital stock so issued shall be deemed to be fully paid and nonassessable stock~~, if:~~

~~1. the entire amount of such consideration has been received by the corporation in the form of cash, services rendered, personal property, real property, leases of real property, or a combination thereof; or~~

~~2. not less than the amount of the consideration determined to be capital pursuant to the provisions of Section 35 of this act has been received by the corporation in such form and the corporation has received a binding obligation of the subscriber or purchaser to pay the balance of the subscription or purchase price~~ upon receipt by the corporation of the authorized consideration.

B. The provisions of subsection A of this section shall not be construed to prevent the board of directors from issuing partly paid shares in accordance with the provisions of Section ~~37~~ 1037 of this ~~act~~ title.

SECTION 5. AMENDATORY 18 O.S. 2001, Section 1035, is amended to read as follows:

Section 1035.

DETERMINATION OF AMOUNT OF CAPITAL; CAPITAL, SURPLUS AND NET ASSETS DEFINED

Any corporation, by resolution of its board of directors, may determine that only a part of the consideration which shall be received by the corporation for any of the shares of its capital stock which it shall issue from time to time shall be capital; but, in case any of the shares issued shall be shares having a par value, the amount of the part of such consideration so determined to be

capital shall be in excess of the aggregate par value of the shares issued for such consideration having a par value, unless all the shares issued shall be shares having a par value, in which case the amount of the part of such consideration so determined to be capital need be only equal to the aggregate par value of such shares. In each such case the board of directors shall specify in dollars the part of such consideration which shall be capital. If the board of directors shall not have determined, at the time of issue of any shares of the capital stock of the corporation issued for cash or within sixty (60) days after the issue of any shares of the capital stock of the corporation issued for ~~property~~ consideration other than cash, what part of the consideration for such shares shall be capital, the capital of the corporation in respect of such shares shall be an amount equal to the aggregate par value of such shares having a par value, plus the amount of the consideration for such shares without par value. The amount of the consideration so determined to be capital in respect of any shares without par value shall be the stated capital of such shares. The capital of the corporation may be increased from time to time by resolution of the board of directors directing that a portion of the net assets of the corporation in excess of the amount so determined to be capital be transferred to the capital account. The board of directors may direct that the portion of such net assets so transferred shall be treated as capital in respect of any shares of the corporation of any designated class or classes. The excess, if any, at any given time, of the net assets of the corporation over the amount so determined to be capital shall be surplus. "Net assets" means the amount by which total assets exceed total liabilities. Capital and surplus are not liabilities for this purpose.

SECTION 6. AMENDATORY 18 O.S. 2001, Section 1038, as amended by Section 8, Chapter 255, O.S.L. 2004 (18 O.S. Supp. 2004, Section 1038), is amended to read as follows:

Section 1038.

RIGHTS AND OPTIONS RESPECTING STOCK

A. Subject to any provisions in the certificate of incorporation, every corporation may create and issue, whether or not in connection with the issue and sale of any shares of stock or other securities of the corporation, rights or options entitling the holders thereof to ~~purchase~~ acquire from the corporation any shares of its capital stock of any class or classes, such rights or options to be evidenced by or in such instrument or instruments as shall be approved by the board of directors.

B. The terms upon which, including the time or times, which may be limited or unlimited in duration, at or within which, and the ~~price or prices~~ consideration, including any formula by which such ~~price or prices~~ consideration may be determined, ~~at~~ for which any such shares may be ~~purchased~~ acquired from the corporation upon the exercise of any such right or option, shall be such as shall be stated in the certificate of incorporation, or in a resolution adopted by the board of directors providing for the creation and issue of such rights or options, and, in every case, shall be set forth or incorporated by reference in the instrument or instruments evidencing such rights or options. In the absence of actual fraud in the transaction, the judgment of the directors as to the consideration for the issuance of such rights or options and the sufficiency thereof shall be conclusive.

C. The board of directors may, by a resolution adopted by the board, authorize one or more officers of the corporation to do one or both of the following:

1. Designate officers and employees of the corporation or of any of its subsidiaries to be recipients of such rights or options created by the corporation; and

2. Determine the number of such rights or options to be received by such officers and employees;

provided, however, that the resolution so authorizing such officer or officers shall specify the total number of rights or options such officer or officers may so award. The board of directors may not authorize an officer to designate himself or herself as a recipient of any such rights or options.

D. In case the shares of stock of the corporation to be issued upon the exercise of such rights or options shall be shares having a par value, the ~~price or prices~~ consideration so to be received therefor shall have a value not ~~be~~ less than the par value thereof. In case the shares of stock so to be issued shall be shares of stock without par value, the consideration therefor shall be determined in the manner provided for in Section 1034 of this title.

SECTION 7. AMENDATORY 18 O.S. 2001, Section 1081, as amended by Section 20, Chapter 255, O.S.L. 2004 (18 O.S. Supp. 2004, 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, if any, 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, or of canceling some or all of the shares, and, if any shares of any of the constituent corporations are not to remain outstanding, to be converted solely into shares or other securities of the surviving or resulting corporation or to be canceled, the cash, property, rights, or securities of any other corporation or entity 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 or entity 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. 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~~, which may be amended and restated, that 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 entities 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 the constituent corporation are corporations of this state and the direct or indirect wholly owned subsidiary that is the other

constituent entity to the merger is a corporation or limited liability company 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, subdivision, combination 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 organizational documents of the surviving entity immediately following the effective time of the merger contain provisions 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 or entity

name, the registered office and agent, the initial board of directors and the initial subscribers for shares, references to members rather than shareholders or shareholders, references to interests, units or the like rather than stock or shares, references to managers, managing members or other members of the governing body rather than directors and such provisions contained in any amendment to the certificate of incorporation as were necessary to effect a change, exchange, reclassification, subdivision, combination or cancellation of stock, if such change, exchange, reclassification, subdivision, combination or cancellation has become effective; provided, however, that:

(1) if the organizational documents of the surviving entity do not contain the following provisions, they shall be amended in the merger to contain provisions requiring that:

(a) any act or transaction by or involving the surviving entity, other than the election or removal of directors or managers, managing members or other members of the governing body of the surviving entity, that requires for its adoption under this act or its organizational documents the approval of the shareholders or members of the surviving entity 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 act and/or by the organizational documents of the

surviving entity; provided, however, that for purposes of this subdivision, any surviving entity that is not a corporation shall include in such amendment a requirement that the approval of the shareholders of the holding company be obtained for any act or transaction by or involving the surviving entity, other than the election or removal of directors or managers, managing members or other members of the governing body of the surviving entity, which would require the approval of the shareholders of the surviving entity if the surviving entity were a corporation subject to this act,

(b) any amendment of the organizational documents of a surviving entity that is not a corporation, which amendment would, if adopted by a corporation subject to this act, be required to be included in the certificate of incorporation of such 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 act and/or by the organizational documents of the surviving entity, and

(c) the business and affairs of a surviving entity that is not a corporation shall be managed by or under the direction of a board of directors, board of managers or other

governing body consisting of individuals who are subject to the same fiduciary duties applicable to, and who are liable for breach of such duties to the same extent as, directors of a corporation subject to this act, and

(2) the organizational documents of the surviving entity may be amended in the merger to reduce the number of classes and shares of capital stock or other equity interests or units that the surviving entity 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 paragraph 1 of this subsection nor any provision of a surviving entity's organizational documents required by division (1) of subparagraph g of paragraph 1 of this subsection shall be deemed or construed to require approval of the shareholders of the holding company to elect or remove directors or managers, managing members or other members of the governing body of the surviving entity.

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. As used in this subsection, the term "organizational documents" means, when used in reference to a corporation, the certificate of incorporation of the corporation and, when used in reference to a limited liability company, the articles of

organization and the operating agreement of the limited liability company.

4. 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 shares of stock of the constituent corporation converted in the merger were 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,

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 in the merger shall be represented by the stock certificates that previously represented the shares of capital stock of the constituent corporation, and

c. to the extent a shareholder of the constituent corporation immediately prior to the merger had standing to institute or maintain derivative litigation on behalf of the constituent corporation, nothing in this section shall be deemed to limit or extinguish such standing.

5. 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 paragraph 1 of this subsection 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 8. AMENDATORY 18 O.S. 2001, Section 1082, as amended by Section 21, Chapter 255, O.S.L. 2004 (18 O.S. Supp. 2004, Section 1082), is amended to read as follows:

Section 1082.

MERGER OR CONSOLIDATION OF DOMESTIC AND FOREIGN CORPORATIONS; SERVICE OF PROCESS UPON SURVIVING OR RESULTING CORPORATION

A. Any one or more corporations of this state may merge or consolidate with one or more other corporations of any other state or states of the United States, or of the District of Columbia, if the laws of the other state or states or of the District permit a corporation of the jurisdiction to merge or consolidate with a corporation of another jurisdiction. The constituent corporations may merge into a single corporation, which may be any one of the constituent corporations, or they may consolidate into a new

corporation formed by the consolidation, which may be a corporation of the state of incorporation of any one of the constituent corporations, pursuant to an agreement of merger or consolidation, as the case may be, complying and approved in accordance with the provisions of this section. In addition, any one or more corporations organized 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 if the laws under which the other corporation or corporations are formed permit a corporation of that jurisdiction to merge or consolidate with a corporation of another jurisdiction.

B. All the constituent corporations shall enter into an 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 same into effect;

3. The manner, if any, 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, or of canceling some or all of the shares, and, if any shares of any of the constituent corporations are not to remain outstanding, to be converted solely into shares or other securities of the surviving or resulting corporation or to be canceled, the cash, property, rights, or securities of any other corporation or entity which the holder 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 or entity may be in addition to or in lieu of the shares or other securities of the surviving or resulting corporation;

4. 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 of the surviving or resulting corporation or of any other corporation the securities of which are to be received in the merger or consolidation, or for some other arrangement with respect thereto consistent with the provisions of Section 1036 of this title; and

5. Other provisions or facts as shall be required to be set forth in the certificate of incorporation by the laws of the state which are stated in the agreement to be the laws that shall govern the surviving or resulting corporation and that can be stated in the case of a merger or consolidation. 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 adopted, approved, executed, and acknowledged by each of the constituent corporations in accordance with the laws under which it is formed, and, in the case of an Oklahoma corporation, in the same manner as is provided for in Section 1081 of this title. The agreement shall be filed and shall become effective for all purposes of the laws of this state when and as provided for in Section 1081 of this title with respect to the merger or consolidation of corporations of this state. In lieu of filing the agreement of merger or consolidation, 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, 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, executed, and acknowledged by each of the constituent corporations in accordance with the provisions of this subsection;

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, which may be amended and restated, that are 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, and the address thereof;

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;

8. If the corporation surviving or resulting from the merger or consolidation is to be a corporation of this state, the authorized capital stock of each constituent corporation which is not a corporation of this state; and

9. The agreement, if any, required by the provisions of subsection D of this section. For purposes of Section 1085 of this title, the term "shareholder" in subsection D of this section shall be deemed to include "member".

D. If the corporation 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, it shall agree that it may be served with process in this state in any proceeding for

enforcement of any obligation of any constituent corporation of this state, as well as for enforcement of any obligation of the surviving or resulting corporation 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 suit or other proceedings and shall specify the address to which a copy of process shall be mailed by the Secretary of State. In the event of service upon the Secretary of State in accordance with the provisions of this subsection, the Secretary of State shall immediately notify the surviving or resulting corporation thereof by letter, certified mail, return receipt requested, directed to the surviving or resulting corporation at the address specified unless the surviving or resulting corporation shall have designated in writing to the Secretary of State a different address for this purpose, in which case it shall be mailed to the last address so designated. The notice shall include a copy of the process and any other papers served on the Secretary of State pursuant to the provisions of this subsection. It shall be the duty of the plaintiff in the event of such service to serve process and any other papers in duplicate, to notify the Secretary of State that service is being effected pursuant to the provisions of this subsection, and to pay the Secretary of State the fee provided for in paragraph 7 of Section 1142 of this title, which fee shall be taxed as part of the costs in the proceeding. 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 effected pursuant to the provisions of this subsection, the return date thereof, and the date service was made. The Secretary

of State shall not be required to retain such information longer than five (5) years from receipt of the service of process by the Secretary of State.

E. The provisions of subsections C and D of Section 1081 of this title shall apply to any merger or consolidation pursuant to the provisions of this section. 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 a corporation of this state. The provisions of subsection F of Section 1081 of this title shall apply to any merger pursuant to the provisions of this section.

SECTION 9. AMENDATORY 18 O.S. 2001, Section 1090.2, as amended by Section 26, Chapter 255, O.S.L. 2004 (18 O.S. Supp. 2004, 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 such 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.

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, if any, 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, or of canceling some or all of the shares or interests, and if any shares of any corporation or any ownership interests of any business entity are not to remain outstanding, to be converted solely into shares, ownership interests, or other securities of the entity surviving or resulting from the merger or consolidation or to be canceled, 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 jurisdiction under which they are formed, as the case may be; provided that 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 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~~, which may be amended and restated, that 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 10. AMENDATORY 18 O.S. 2001, Section 1090.4, is amended to read as follows:

Section 1090.4

CONVERSION OF A DOMESTIC BUSINESS

ENTITY TO A DOMESTIC CORPORATION

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

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 a certificate of conversion that has been executed in accordance with subsection H of this section and filed

in accordance with Section 1007 of this title, to which shall be attached, a certificate of incorporation that has been prepared, executed and acknowledged in accordance with Section 1007 of this title.

C. The certificate of conversion shall state:

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

2. The jurisdiction of its formation, if a foreign business entity;

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

~~3.~~ 4. The name of the corporation as set forth in its certificate of incorporation filed in accordance with subsection B of this section; and

~~4.~~ 5. 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 this title.

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 this title, 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 such 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 such 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 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 11. AMENDATORY 18 O.S. 2001, Section 1090.5, as amended by Section 28, Chapter 255, O.S.L. 2004 (18 O.S. Supp. 2004, Section 1090.5), is amended to read as follows:

Section 1090.5

CONVERSION OF DOMESTIC CORPORATION

TO A DOMESTIC BUSINESS ENTITY

A. A corporation of this state may, upon the authorization of such conversion in accordance with this section, convert to a business entity. As used in this section, the term "business entity" means a domestic <u>or foreign</u> partnership, whether general or

limited, limited liability company, business trust, common law trust, or other unincorporated association.

B. The board of directors of the corporation which desires to convert under this section shall adopt a resolution approving such 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, whether voting or nonvoting, of the corporation 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. The corporation adopts the conversion if all outstanding shares of stock of the corporation, whether voting or nonvoting, are voted for the resolution.

C. If the governing act of the domestic business entity into which the corporation is converting does not provide for the filing of a conversion notice with the Secretary of State <u>or the corporation is converting into a foreign business entity</u>, the corporation shall file with the Secretary of State a certificate of conversion executed in accordance with Section 1007 of this title 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 <u>and its jurisdiction of formation, if a foreign business entity</u>;

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

5. The agreement of the foreign business entity that it may be served with process in this state in any action, suit or proceeding for enforcement of any obligation of the foreign business entity arising while it was a limited liability company of this state, and that it irrevocably appoints the Secretary of State as its agent to accept service of process in any such action, suit or proceeding; and

6. 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 ~~information~~ formation, the type and date of such filing.

D. Upon the filing of a conversion notice with the Secretary of State, whether under subsection C of this section or under the governing act of the domestic business entity into which the corporation is converting, the filing of any formation document required by the governing act of the domestic entity into which the corporation is converting, and payment to the Secretary of State of all prescribed fees, the Secretary of State shall certify that the corporation has filed all documents and paid all required fees, 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 this title. The certificate of the Secretary of State shall be prima facie evidence of the conversion by the corporation.

E. 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 such conversion or the personal liability of any person incurred prior to the conversion.

F. 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 the time.

G. 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 such 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 12. AMENDATORY 18 O.S. 2001, Section 1118, is amended to read as follows:

Section 1118.

~~BANKRUPTCY~~ PROCEEDINGS UNDER ~~A STATUTE OF THE UNITED STATES~~ THE FEDERAL BANKRUPTCY CODE; EFFECTUATION

A. Any corporation of this state, ~~a plan of reorganization of which, pursuant to the provisions of any applicable statute of the United States relating to the bankruptcy of corporations, has been or shall be confirmed by the decree or order of a court of competent jurisdiction~~ an order for relief with respect to which has been entered pursuant to the Federal Bankruptcy Code, 11 U.S.C. Section 101 et seq., or any successor statute, may put into effect and carry out ~~the plan and the~~ any decrees and orders of the court or judge ~~relative thereto and may take any proceedings and do any act provided in the plan~~ in the bankruptcy proceeding and may take a corporate action provided or directed by such decrees and orders, without further action by its directors or shareholders. Such power and authority may be exercised, and such ~~proceedings and acts~~ corporate action may be taken, as may be directed by such decrees or orders, by the trustee or trustees of such corporation appointed or elected in the bankruptcy proceedings, or a majority thereof, or if

none be appointed or elected and acting, by designated officers of the corporation, or by a ~~master or other~~ representative appointed by the court or judge, with like effect as if exercised and taken by unanimous action of the directors and shareholders of the corporation.

B. Such corporation, in the manner provided for in subsection A of this section, but without limiting the generality or effect of the foregoing, may alter, amend, or repeal its bylaws; constitute or reconstitute and classify or reclassify its board of directors, and name, constitute or appoint directors and officers in place of or in addition to all or some of the directors or officers then in office; amend its certificate of incorporation, and make any change in its capital or capital stock, or any other amendment, change, or alteration, or provision, authorized by the provisions of ~~the Oklahoma General Corporation Act~~ this act; be dissolved, transfer all or part of its assets, merge, ~~or~~ consolidate or convert as permitted by the provisions of ~~the Oklahoma General Corporation Act~~ this act, in which case, however, no shareholder shall have any statutory right of appraisal of his or her stock; change the location of its registered office, change its registered agent, and remove or appoint any agent to receive service of process; authorize and fix the terms, manner and conditions of, the issuance of bonds, debentures or other obligations, whether or not convertible into stock of any class, or bearing warrants or other evidences of optional rights to purchase or subscribe for stock of any class; or lease its property and franchises to any corporation, if permitted by law.

C. A certificate of any amendment, change or alteration, or of dissolution, or any agreement of merger ~~or~~, consolidation or conversion, made by such corporation pursuant to the provisions of this section, shall be filed with the Secretary of State in accordance with the provisions of Section ~~7~~ 1007 of this ~~act~~ title,

and, subject to the provisions of subsection D of Section ~~7~~ 1007 of this ~~act~~ title, shall thereupon become effective in accordance with its terms and the provisions of this section. Such certificate, agreement of merger or other instrument shall be made, executed and acknowledged, as may be directed by such decrees or orders, by the trustee or trustees appointed or elected in the reorganization or debtor in possession in the bankruptcy proceedings, or a majority thereof, or, if none be appointed or elected and acting, by the officers of the corporation, or by a ~~master or other~~ representative appointed by the court or judge, and shall certify that provision for the making of such certificate, agreement or instrument is contained in a decree or order of a court or judge having jurisdiction of a proceeding under such ~~applicable statute of the United States for the reorganization of such corporation~~ Federal Bankruptcy Code or successor statute.

D. The provisions of this section shall cease to apply to such corporation upon ~~consummation of a plan of reorganization or~~ the entry of a final decree in the bankruptcy proceedings closing the case and discharging the trustee or trustees, if any; provided, ~~or the debtor in possession~~ however, that the closing of a case and discharge of trustee or trustees, if any, will not affect the validity of any act previously performed pursuant to subsections A and C of this section.

E. On filing any certificate, agreement, report or other paper made or executed pursuant to ~~the provisions of~~ this section, there shall be paid to the Secretary of State, for the use of the state, the same fees as are payable by corporations not in bankruptcy proceedings upon the filing of like certificates, agreements, reports or other papers.

SECTION 13. AMENDATORY 18 O.S. 2001, Section 2002, as amended by Section 10, Chapter 180, O.S.L. 2003 (18 O.S. Supp. 2004, Section 2002), is amended to read as follows:

Section 2002.

PURPOSES FOR FORMATION

A limited liability company may be organized under ~~the Oklahoma General Corporation Act~~ this act for the purpose of carrying on any lawful business, purpose or activity, whether or not for profit, except that a limited liability company may not conduct business as a domestic insurer.

SECTION 14. AMENDATORY 18 O.S. 2001, Section 2005, as amended by Section 34, Chapter 255, O.S.L. 2004 (18 O.S. Supp. 2004, Section 2005), is amended to read as follows:

Section 2005.

ARTICLES OF ORGANIZATION - CONTENTS

A. The articles of organization shall set forth:

1. The name of the limited liability company;

2. The term of the existence of the limited liability company which may be perpetual; and

3. The street address of its principal place of business, wherever located, and the name and street address of its resident agent which shall be identical to its registered office in this state.

B. If the limited liability company is to establish two or more series of members, managers or membership interests having separate rights, powers or duties as provided under Section ~~50~~ 2054.4 of this ~~act~~ title and the debts, liabilities and obligations incurred, contracted for or otherwise existing with respect to a particular series are to be enforceable against the assets of the series only, the articles of organization shall set forth a notice of the limitation on liabilities of the series.

C. The articles of organization may set forth any other matters the members determine to include. It is not necessary to set out in the articles of organization any of the powers enumerated in this act.

SECTION 15. AMENDATORY 18 O.S. 2001, Section 2007, as amended by Section 36, Chapter 255, O.S.L. 2004 (18 O.S. Supp. 2004, Section 2007), is amended to read as follows:

Section 2007.

DELIVERY OF ARTICLES TO SECRETARY

OF STATE - FILING - TIME WHEN EFFECTIVE

A. One signed copy of the articles of organization or any other articles authorized by this act shall be delivered to the Secretary of State. Unless the Secretary of State finds that any articles do not conform to law, upon receipt of all filing and other fees required by law, he or she shall:

1. Endorse on each copy the word "filed" and the day, month and year, and the time, if applicable, of the filing thereof;

2. File one copy in his or her office; and

3. Return the other copy to the person who filed it or his or her representative.

B. Unless a later effective date or time, which shall be a specified date or time not later than a time on the ~~nineteenth~~ ninetieth day after the filing, is provided in the articles, articles of organization are effective, and the limited liability company is formed, at the time of the filing of the articles of organization with the Secretary of State.

C. Unless a later effective date or time, which shall be a specified date or time not later than a time on the ~~nineteenth~~ ninetieth day after the filing, is provided in the articles, articles of amendment, merger, consolidation, conversion or dissolution are effective at the time of their filing with the Secretary of State.

SECTION 16. AMENDATORY 18 O.S. 2001, Section 2010, as amended by Section 37, Chapter 255, O.S.L. 2004 (18 O.S. Supp. 2004, Section 2010), is amended to read as follows:

Section 2010.

REGISTERED OFFICE AND AGENT

A. Every domestic limited liability company shall continuously maintain in this state:

1. A registered office which may be, but need not be, the same as its principal place of business; and

2. A resident agent for service of process on the limited liability company that may be the domestic limited liability company itself, an individual resident of this state, or a domestic or qualified foreign corporation, limited liability company, or limited partnership. Each registered agent shall maintain a business office identical with the registered office which is open during regular business hours to accept service of process and otherwise perform the functions of a registered agent.

B. 1. A limited liability company may designate or change its resident agent, registered office, or principal office by filing with the Office of the Secretary of State a statement authorizing the designation or change and signed by any manager.

2. A limited liability company may change the street address of its registered office by filing with the Office of the Secretary of State a statement of the change signed by any manager.

3. A designation or change of a principal office or resident agent or street address of the registered office for a limited liability company under this subsection is effective when the Office of the Secretary of State files the statement, unless a later effective date or time, which shall be a specified date or time not later than a time on the ~~nineteenth~~ ninetieth day after the filing, is provided in the statement.

C. 1. A resident agent who changes his or her street address in the state may notify the Office of the Secretary of State of the change by filing with the Office of the Secretary of State a statement of the change signed by the agent or on the agent's behalf.

2. The statement shall include:

a. the name of the limited liability company for which the change is effective,

b. the new street address of the resident agent, and

c. the date on which the change is effective, if to be effective after the filing date.

3. If the new address of the resident agent is the same as the new address of the principal office of the limited liability company, the statement may include a change of address of the principal office if:

a. the resident agent notifies the limited liability company of the change in writing, and

b. the statement recites that the resident agent has done so.

4. The change of address of the resident agent or principal office is effective when the Office of the Secretary of State files the statement, unless a later effective date or time, which shall be a specified date or time not later than a time on the ~~nineteenth~~ ninetieth day after the filing, is provided in the statement.

D. 1. A resident agent may resign by filing with the Office of the Secretary of State a copy of the resignation, signed and acknowledged by the registered agent, which contains a statement that notice of the resignation was given to the limited liability company at least thirty (30) days prior to the filing of the resignation by mailing or delivering the notice to the limited liability company at its address last known to the registered agent and specifying the address therein.

2. The resignation is effective thirty (30) days after it is filed, unless a later effective date or time, which shall be a specified date or time not later than a time on the ~~nineteenth~~ ninetieth day after the filing, is provided in the resignation.

3. If a domestic limited liability company fails to obtain and designate a new registered agent before the resignation is effective, the Secretary of State shall be deemed to be the registered agent of the limited liability company until a new registered agent is designated.

E. If a limited liability company has no registered agent or the registered agent cannot be found, then service of process on the limited liability company may be made by serving the Secretary of State as its agent as provided in Section 2004 of Title 12 of the Oklahoma Statutes.

SECTION 17. AMENDATORY 18 O.S. 2001, Section 2037, as amended by Section 48, Chapter 255, O.S.L. 2004 (18 O.S. Supp. 2004, Section 2037), is amended to read as follows:

Section 2037.

DISSOLUTION AND WINDING UP OF BUSINESS - CAUSES

A. A limited liability company is dissolved and its ~~affairs~~ business shall be wound up upon the earlier of:

1. The occurrence of the latest date on which the limited liability company is to dissolve set forth in the articles of organization;

2. The occurrence of events specified in writing in the operating agreement;

3. The written consent of all of the members or, if there is more than one class or group of members, then by the written consent of all of the members of each class or group;

4. At any time there are no members; provided, that the limited liability company is not dissolved and is not required to be wound up if:

a. unless otherwise provided in an operating agreement, within ninety (90) days or such other period as is provided for in the operating agreement after the occurrence of the event that terminated the continued

membership of the last remaining member, the personal representative of the last remaining member agrees in writing to continue the limited liability company and to the admission of the personal representative of the member or its nominee or designee to the limited liability company as a member, effective as of the occurrence of the event that terminated the continued membership of the last remaining member; provided, that an operating agreement may provide that the personal representative of the last remaining member shall be obligated to agree in writing to continue the limited liability company and to the admission of the personal representative of the member or its nominee or designee to the limited liability company as a member, effective as of the occurrence of the event that terminated the continued membership of the last remaining member, or

b. a member is admitted to the limited liability company in the manner provided for in the operating agreement, effective as of the occurrence of the event that terminated the continued membership of the last remaining member, within ninety (90) days or such other period as is provided for in the operating agreement after the occurrence of the event that terminated the continued membership of the last remaining member, pursuant to a provision of the operating agreement that specifically provides for the admission of a member to the limited liability company after there is no longer a remaining member of the limited liability company; or

5. Entry of a decree of judicial dissolution under Section 2038 of this title.

B. A limited liability company continues after dissolution only for the purpose of winding up its business.

SECTION 18. AMENDATORY 18 O.S. 2001, Section 2054.1, as amended by Section 52, Chapter 255, O.S.L. 2004 (18 O.S. Supp. 2004, Section 2054.1), is amended to read as follows:

Section 2054.1

CONVERSION OF CERTAIN ENTITIES

TO A LIMITED LIABILITY COMPANY

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

B. Any business entity may convert to a domestic limited liability company by complying with subsection H of this section and filing with the Secretary of State in accordance with Section 2007 of this title articles of conversion to a limited liability company that have been executed in accordance with Section 2006 of this title, to which shall be attached articles of organization that comply with Sections 2005 and 2008 of this title and have been executed by one or more authorized persons in accordance with Section 2006 of this title.

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 limited liability company;

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; and

4. The future effective date or time, which shall be a specified date or time not later than a time on the ~~nineteenth~~ ninetieth day after the filing, of the conversion to a limited

liability company if it is not to be effective upon the filing of the articles of conversion to a limited liability company and the articles of organization.

D. Upon the filing in the Office of the Secretary of State of the articles of conversion to a limited liability company and the articles of organization or upon the future effective date or time of the articles of conversion to limited liability company and the articles of organization, 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 this title, 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 thenceforth

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 a continuation of the converting business entity.

H. Before filing the articles of conversion of a business entity 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.

I. In connection with a conversion hereunder, rights or securities of or interests in the business entity that is to be converted to a domestic limited liability company may be exchanged for or converted into cash, property, or rights or securities of or interests in the domestic limited liability company or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, or rights or securities of or interests in another domestic limited liability company or other business entity.

J. The provisions of this section shall not be construed to limit the accomplishment of a change in the law governing, or the

domicile of, a business entity to this state by any other means provided for in an operating agreement or other agreement or as otherwise permitted by law, including by the amendment of an operating agreement or other agreement.

SECTION 19. AMENDATORY 18 O.S. 2001, Section 2054.2, as amended by Section 53, Chapter 255, O.S.L. 2004 (18 O.S. Supp. 2004, Section 2054.2), is amended to read as follows:

Section 2054.2

APPROVAL OF CONVERSION OF

A LIMITED LIABILITY COMPANY

A. A domestic limited liability company may convert to a business entity upon the authorization of such conversion in accordance with this section. As used in this section, the term "business entity" means a domestic <u>or foreign</u> corporation, partnership, whether general or limited, business trust, common law trust, or other unincorporated association.

B. 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.

C. 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 a merger or consolidation.

D. 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 of a majority of the membership interest or, if there is more than one class or group of members, then by a majority of the membership interest in each class or group of members. Notwithstanding the foregoing, in addition to any other authorization required by this section, if the business 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 business entity, the conversion must be authorized by any and all members who would be exposed to personal liability.

E. Unless otherwise agreed, the conversion of a domestic limited liability company to another business entity pursuant to this section shall not require the limited liability company to wind up its affairs or pay its liabilities and distribute its assets.

F. In connection with a conversion of a domestic limited liability company to another business entity pursuant to this section, rights or securities of or interests in the domestic limited liability company which are to be converted may be exchanged for or converted into cash, property, rights or securities of or interests in the business entity into which the domestic limited liability company is being converted or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, rights or securities of or interests in another business entity.

G. If the governing act of the domestic business entity into which the limited liability company is converting does not provide for the filing of a conversion notice with the Secretary of State <u>or the limited liability company is converting into a foreign business entity</u>, articles of conversion executed in accordance with Section 2006 of this title, shall be filed in the office of the Secretary of State in accordance with Section 2007 of this title. The articles of conversion shall state:

1. The name of the limited liability company and, if it has been changed, the name under which its articles of organization were originally filed;

2. The date of filing of its original articles of organization with the Secretary of State;

3. The jurisdiction of formation of the foreign business entity, if the limited liability company is converting into a foreign business entity;

4. The future effective date or time, which shall be a date or time not later than the ~~nineteenth~~ ninetieth day after the time of the filing, of the conversion if it is not to be effective upon the filing of the articles of conversion; ~~and~~

~~4.~~ 5. That the conversion has been approved in accordance with this section;

6. The agreement of the business entity that it may be served with process in this state in any action, suit or proceeding for enforcement of any obligation of the business entity arising while it was a limited liability company of this state, and that it irrevocably appoints the Secretary of State as its agent to accept service of process in any such action, suit or proceeding; and

7. The address to which a copy of the service of process shall be mailed to it by the Secretary of State.

H. Upon the filing of a conversion notice with the Secretary of State, whether under subsection G of this section or under the governing act of the domestic business entity into which the limited liability company is converting, the filing of any formation document required by the governing act of the domestic entity into which the limited liability company is converting, and payment to the Secretary of State of all prescribed fees, the Secretary of State shall certify that the limited liability company has filed all documents and paid all required fees, and thereupon the limited liability company shall cease to exist as a limited liability

company of this state. The Secretary of State's certificate shall be prima facie evidence of the conversion by the limited liability company.

I. The conversion of a limited liability company out of this state in accordance with this section and the resulting cessation of its existence as a domestic limited liability company pursuant to articles of conversion to foreign business entity shall not be deemed to affect any obligations or liabilities of the limited liability company incurred before the conversion or the personal liability of any person incurred before the conversion, nor shall it be deemed to affect the choice of law applicable to the limited liability company with respect to matters arising before the conversion.

SECTION 20. AMENDATORY 18 O.S. 2001, Section 2055.2, is amended to read as follows:

Section 2055.2

ANNUAL CERTIFICATE FOR DOMESTIC LIMITED LIABILITY COMPANY AND FOREIGN LIMITED LIABILITY COMPANY

A. Every domestic limited liability company and every foreign limited liability company registered to do business in this state shall file a certificate each year in the Office of the Secretary of State which shall confirm it is an active business and include its principal place of business address.

B. The annual certificate shall be due on ~~July 1~~ the anniversary date of filing the certificate following the close of the calendar year until the dissolution of the articles of organization or the withdrawal of the foreign limited liability company has been filed with the Secretary of State.

C. The Secretary of State shall, at least sixty (60) days prior to ~~July 1~~ the anniversary date of filing the certificate of each year, cause to be mailed a notice of the annual certificate 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; or, if there is no agent listed upon the records of the Secretary of State~~, to the last known principal place of business address of the limited liability company.

D. A domestic limited liability company or foreign limited liability company that neglects, refuses or fails to file the annual certificate 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.

E. Until dissolution or withdrawal, 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 file the annual certificate with the Secretary of State may 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 filing of the annual certificate for each year for which the domestic limited liability company or foreign limited liability company neglected, refused or failed to file the annual certificate within three (3) years from the date it is due.

F. A domestic limited liability company that has ceased to be in good standing by reason of its neglect, refusal or failure to file an annual certificate with the Secretary of State or pay the registered agent fee to the Secretary of State shall remain a domestic limited liability company formed under this act until dissolution of its articles of organization. The Secretary of State shall not accept for filing any certificate or articles, except a 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 to any domestic limited liability company or foreign limited liability company which has neglected, refused or

failed to file an annual certificate, 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.

G. 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 file an annual certificate or pay an annual registered agent fee to the Secretary of State may not maintain any action, suit or proceeding in any court of this state until such 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 of 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 filed its annual certificate with the Secretary of State or paid its registered agent fee to the Secretary of State then due and payable, together with penalties.

H. The neglect, refusal or failure of a domestic limited liability company or foreign limited liability company to file an annual certificate or pay a 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.

I. 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 the domestic limited liability company or foreign limited liability company to file an annual certificate or pay a 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 21. AMENDATORY 54 O.S. 2001, Section 1-901, as amended by Section 56, Chapter 255, O.S.L. 2004 (54 O.S. Supp. 2004, Section 1-901), is amended to read as follows:

Section 1-901. Definitions.

In this article:

(1) “Constituent partnership” means a constituent organization that is a partnership;

(2) “Constituent organization” means an organization that is party to a merger;

(3) “Converted organization” means the organization into which a converting organization converts pursuant to Sections 1-902 through 1-905 of this title;

(4) “Converting partnership” means a converting organization that is a partnership;

(5) "Converting organization" means an organization that converts into another organization pursuant to Section 1-902 of this title;

(6) "Governing statute" of an organization means the statute that governs the organization's internal affairs;

(7) "Organization" means a ~~domestic~~ general partnership, including a limited liability partnership; limited partnership; limited liability company; business trust; corporation; or any other unincorporated association. The term includes domestic and foreign organizations regardless of whether organized for profit;

(8) "Organizational documents" means:

(i) for a domestic and foreign general partnership, its partnership agreement;

(ii) for a domestic and foreign limited partnership, its certificate of limited partnership and partnership agreement;

(iii) for a domestic and foreign limited liability company, its articles of organization and operating agreement, or comparable records as provided in its governing statute;

(iv) for a business trust, its agreement of trust and declaration of trust;

(v) for a domestic and foreign corporation for profit, its certificate of incorporation, bylaws, and other agreements among its shareholders which are authorized by its governing statute, or comparable records as provided in its governing statute; and

(vi) for any other organization, the basic records that create the organization and determine its internal governance and the relations among the persons that own it, have an interest in it, or are members of it; and

(9) "Personal liability" means personal liability for a debt, liability, or other obligation of an organization, which is imposed on a person that co-owns, has an interest in, or is a member of the organization:

(i) by the organization's governing statute solely by reason of the person co-owning, having an interest in, or being a member of the organization; or

(ii) by the organization's organizational documents under a provision of the organization's governing statute authorizing those documents to make one or more specified persons liable for all or specified debts, liabilities, and other obligations of the organization solely by reason of the person or persons co-owning, having an interest in, or being a member of the organization.

SECTION 22. AMENDATORY 54 O.S. 2001, Section 1-903, as amended by Section 58, Chapter 255, O.S.L. 2004 (54 O.S. Supp. 2004, Section 1-903), is amended to read as follows:

Section 1-903. ~~Conversion of Limited Partnership to Partnership~~ Filings Required for Conversion; Effective Date.

(a) After a plan of conversion is approved, if:

(i) converted organization is a domestic converted partnership, ~~or~~

(ii) the governing statute of the converted organization does not provide for the filing of a conversion notice with the Secretary of State, or

(iii) the converted organization is a foreign organization:

(1) a converting partnership shall deliver to the Secretary of State for filing a certificate of conversion, which must include:

(i) a statement that the partnership was converted from, or has been converted into, another organization, as the case may be;

(ii) the name and form of the converting organization and the jurisdiction of its governing statute;

(iii) the date the conversion is effective under the governing statute of the converted organization;

(iv) a statement that the conversion was approved as required by Section 1-902 of this title, if the converted organization is not a converted partnership; ~~and~~

(v) a statement that the conversion was approved as required by the governing statute of the converted organization, if the converted organization is a converted partnership~~.~~; and

(vi) If the converted organization is a foreign organization not authorized to transact business in this state, the street and mailing address of an office which the Secretary of State may use for the purposes of subsection C of Section 1-904 of this title; and

(2) if the governing statute of the converted organization requires the filing of an organizational document with the Secretary of State, the converted organization shall deliver to the Secretary of State for filing the required organizational document.

(b) A conversion becomes effective:

(1) if the converted organization is a domestic organization, when the certificate of conversion takes effect; and

(2) if the converted organization is a foreign organization, as provided by the governing act of the converted organization.

SECTION 23. AMENDATORY 54 O.S. 2001, Section 1-904, as amended by Section 59, Chapter 255, O.S.L. 2004 (54 O.S. Supp. 2004, Section 1-904), is amended to read as follows:

Section 1-904. Effect of Conversion; Entity Unchanged.

(a) An organization that has been converted pursuant to this article is for all purposes the same entity that existed before the conversion.

(b) When a conversion takes effect:

(1) all property owned by the converting organization remains vested in the converted organization;

(2) all debts, liabilities and other obligations of the converting organization continue as obligations of the converted organization;

(3) an action or proceeding pending against the converting organization may be continued as if the conversion had not occurred;

(4) except as prohibited by other law, all of the rights, privileges, immunities, powers, and purposes of the converting organization remain vested in the converted organization;

(5) except as otherwise provided in the plan of conversion, the terms and conditions of the plan of conversion take effect; and

(6) except as otherwise agreed, the conversion does not dissolve a converting partnership for the purposes of Article 8.

<u>(c) A converted organization that is a foreign organization consents to the jurisdiction of the courts of this state to enforce any obligation owed by the converting partnership, if before the conversion the converting partnership was subject to suit in this state on the obligation. A converted organization that is a foreign organization and not authorized to transact business in this state appoints the Secretary of State as its agent for service of process for purposes of enforcing an obligation under this subsection.</u>

SECTION 24. AMENDATORY 54 O.S. 2001, Section 302, is amended to read as follows:

Section 302.

DEFINITIONS

As used in the Oklahoma Revised Uniform Limited Partnership Act, unless the context otherwise requires:

1. “Business entity” means a domestic or foreign corporation, limited liability company, business trust, common law trust, or other unincorporated association, including a partnership, whether general or limited, but excluding a domestic limited partnership;

2. "Certificate of limited partnership" means the certificate referred to in Section 309 of this title and the certificate as amended or restated;

~~2.~~ 3. "Contribution" means any cash, property, services rendered or promissory note or other binding obligation to contribute cash or property or to perform services, which a partner contributes to a limited partnership in his capacity as a partner;

~~3.~~ 4. "Event of withdrawal of a general partner" means an event that causes a person to cease to be a general partner as provided in Section 324 of this title;

~~4.~~ 5. "Foreign limited partnership" means a partnership other than a domestic limited partnership and having as partners one or more general partners and one or more limited partners;

~~5.~~ 6. "General partner" means a person who has been admitted to a limited partnership as a general partner in accordance with the partnership agreement and named in the certificate of limited partnership as a general partner;

~~6.~~ 7. "Limited partner" means a person who has been admitted to a limited partnership as a limited partner in accordance with the partnership agreement;

~~7.~~ 8. "Limited partnership" and "domestic limited partnership" means a partnership formed by two or more persons under the laws of this state and having one or more general partners and one or more limited partners;

~~8.~~ 9. "Partner" means a limited or general partner;

~~9.~~ 10. "Partnership agreement" means any valid written or oral agreement of the partners as to the affairs of a limited partnership and the conduct of its business;

~~10.~~ 11. "Partnership interest" means a partner's share of the profits and losses of a limited partnership and the right to receive distributions of partnership assets;

~~11.~~ 12. "Person" means a natural person, partnership, domestic or foreign limited partnership, trust, estate, association or corporation; and

~~12.~~ 13. "State" means a state, territory or possession of the United States, the District of Columbia or the Commonwealth of Puerto Rico.

SECTION 25. AMENDATORY 54 O.S. 2001, Section 310.1, is amended to read as follows:

Section 310.1

MERGER OR CONSOLIDATION

A. Pursuant to an agreement of merger or consolidation, a domestic limited partnership may merge or consolidate with or into one or more domestic limited partnerships or other business entities, formed or organized under the laws of this state, any other state, or the District of Columbia, with such domestic limited partnership or other business entity as the agreement shall provide being the surviving or resulting domestic limited partnership or other business entity. ~~As used in this section, "other business entity" means a corporation, a business trust, a common law trust, or an unincorporated business including a partnership, whether general or limited, but excluding a domestic limited partnership.~~

B. Unless otherwise provided in the partnership agreement, a merger or consolidation shall be approved by each domestic limited partnership which is to merge or consolidate (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 prior approval, an agreement of merger or consolidation may be terminated or amended pursuant to a provision for such termination or amendment contained in the agreement of merger or consolidation.

C. If a domestic limited partnership is merging or consolidating pursuant to this section, the domestic limited partnership or other business entity surviving or resulting in or from the merger or consolidation shall file a certificate of merger or consolidation with the Secretary of State. The certificate of merger or consolidation shall state:

1. The name and jurisdiction of formation or organization of each of the domestic limited partnerships or other business entities which is to merge or consolidate;

2. That an agreement of merger or consolidation has been approved and executed by each of the domestic limited partnerships or other business entities which is to merge or consolidate;

3. The name of the surviving or resulting domestic limited partnership or other business entity;

4. The future effective date or time, which shall be a date or time certain, of the merger or consolidation if it is not to be effective upon the filing of the certificate of merger or consolidation;

5. That the agreement of merger or consolidation is on file at a place of business of the surviving or resulting domestic limited partnership or other business entity, and shall state the address thereof;

6. That a copy of the agreement of merger or consolidation shall be furnished by the surviving or resulting domestic limited partnership or other business entity, upon request and without cost, to any partner of any domestic limited partnership or any person holding an interest in any other business entity which is to merge or consolidate; and

7. If the surviving or resulting entity is not a domestic limited partnership or corporation organized pursuant to the laws of this state, a statement that such surviving or resulting other business entity agrees it may be served with process in this state in any action, suit or proceeding for the enforcement of any obligation of any domestic limited partnership which is to merge or consolidate, irrevocably appointing the Secretary of State as its agent to accept service of process in any such action, suit or proceeding, and specifying the address to which a copy of such process shall be mailed to the entity by the Secretary of State.

D. Any failure to file a certificate of merger or consolidation in connection with a merger or consolidation which was effective prior to September 1, 1990, shall not affect the validity or effectiveness of any such merger or consolidation.

E. Unless a future effective date or time is provided in a certificate of merger or consolidation, in which event a merger or consolidation shall be effective at any such future effective date or time, a merger or consolidation shall be effective upon the filing with the Secretary of State of a certificate of merger or consolidation.

F. A certificate of merger or consolidation shall act as a certificate of cancellation for a domestic limited partnership which is not the surviving or resulting entity in the merger or consolidation.

G. When any merger or consolidation shall have become effective pursuant to this section for all purposes of the laws of this state,

all of the rights, privileges and powers of each of the domestic limited partnerships and other business entities that have merged or consolidated, and all property, real, personal and mixed, and all debts due to any of said domestic limited partnerships and other business entities, as well as all other things and causes of action belonging to each of such domestic limited partnerships and other business entities shall be vested in the surviving or resulting domestic limited partnership or other business entity, and shall thereafter be the property of the surviving or resulting domestic limited partnership or other business entity as they were of each of the domestic limited partnerships and other business entities that have merged or consolidated, and the title to any real property vested by deed or otherwise, under the laws of this state, in any of such domestic limited partnerships and other business entities shall not revert or be in any way impaired by reason of this section, but all rights of creditors and all liens upon any property of any said domestic limited partnerships and other business entities shall be preserved unimpaired. All debts, liabilities and duties of each of the domestic limited partnerships and other business entities that have merged or consolidated shall thenceforth attach to the surviving or resulting domestic limited partnership or other business entity, and may be enforced against the limited partnership or other entity to the same extent as if said debts, liabilities and duties had been incurred or contracted by the limited partnership or other entity. Unless otherwise agreed, a merger or consolidation of a domestic limited partnership, including a domestic limited partnership which is not the surviving or resulting entity in the merger or consolidation, shall not require such domestic limited partnership to wind up its affairs pursuant to Section 347 of Title 54 of the Oklahoma Statutes or pay its liabilities and distribute its assets pursuant to Section 348 of Title 54 of the Oklahoma Statutes.

H. At the time of filing a merger or consolidation, a fee in the amount of One Hundred Dollars ($100.00) shall be paid to the Secretary of State for deposit in the General Revenue Fund of the State Treasury.

SECTION 26. AMENDATORY 54 O.S. 2001, Section 310.2, as amended by Section 61, Chapter 255, O.S.L. 2004 (54 O.S. Supp. 2004, Section 310.2), is amended to read as follows:

Section 310.2

CONVERSION OF CERTAIN ENTITIES

TO A LIMITED PARTNERSHIP

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 with the Secretary of State in accordance with Section 314 of this title a certificate of conversion to limited partnership that has been executed in accordance with Section 312 of this title, to which shall be attached a certificate of limited partnership that complies with Section 309 of this title and has been executed in accordance with Section 312 of this title.

~~C.~~ B. 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.~~ C. Upon the filing with the Secretary of State 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 this title, the existence of the limited partnership shall be deemed to have commenced on the date the business entity was formed.

~~E.~~ D. 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 such conversion.

~~F.~~ E. 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 thenceforth 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.~~ 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 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 a continuation of the converting business entity.

~~H.~~ G. Before filing a certificate of conversion to limited partnership with 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 that in any event, such 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.

~~I.~~ H. In connection with a conversion hereunder, rights or securities of or interests in the business entity that is to be converted to a domestic limited partnership may be exchanged for or converted into cash, property, or rights or securities of or interests in the domestic limited partnership or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, or rights or securities of or interests in another domestic limited partnership or other business entity.

~~J.~~ I. The provisions of this section shall not be construed to limit the accomplishment of a change in the law governing, or the domicile of, a business entity to this state by any other means provided for in a partnership agreement or other agreement or as otherwise permitted by law, including by the amendment of a partnership agreement or other agreement.

SECTION 27. AMENDATORY 54 O.S. 2001, Section 310.3, as amended by Section 62, Chapter 255, O.S.L. 2004 (54 O.S. Supp. 2004, Section 310.3), is amended to read as follows:

Section 310.3

APPROVAL OF CONVERSION

OF A LIMITED PARTNERSHIP

A. A domestic limited partnership may convert to a business entity upon the authorization of the conversion in accordance with this section.

B. 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.

C. 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.

D. 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.

E. Unless otherwise agreed, the conversion of a domestic limited partnership to another business entity pursuant to this section shall not require the limited partnership to wind up its affairs or pay its liabilities and distribute its assets.

F. In connection with a conversion of a domestic limited partnership to another business entity pursuant to this section, rights or securities of or interests in the domestic limited partnership that are to be converted may be exchanged for or converted into cash, property, rights or securities of or interests in the business entity into which the domestic limited partnership is being converted or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, rights or securities of or interests in another business entity.

G. If the governing act of the domestic business entity into which the limited partnership is converting does not provide for the filing of a conversion notice with the Secretary of State <u>or the limited partnership is converting into a foreign business entity</u>, the certificate of conversion executed in accordance with Section 312 of this title shall be filed in the office of the Secretary of

State in accordance with Section 314 of this title. The certificate of conversion shall state:

1. The name of the limited partnership and, if it has been changed, the name under which its certificate of limited partnership were originally filed;

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

3. The jurisdiction of formation of the foreign business entity, if the limited partnership is converting into a foreign business entity;

4. The future effective date or time, which shall be a specified date or time not later than a time on the ~~nineteenth~~ ninetieth day after filing, of the conversion if it is not to be effective upon the filing of the certificate of conversion; and

~~4.~~ 5. That the conversion has been approved in accordance with this section.

H. Upon the filing of a conversion notice with the Secretary of State, whether under subsection G of this section or under the governing act of the domestic business entity into which the limited partnership is converting, the filing of any formation document required by the governing act of the domestic entity into which the limited partnership is converting, and payment to the Secretary of State of all prescribed fees, the Secretary of State shall certify that the limited partnership has filed all documents and paid all required fees, and thereupon the limited partnership shall cease to exist as a limited partnership of this state. The Secretary of State's certificate shall be prima facie evidence of the conversion by the limited partnership.

I. The conversion of a limited partnership out of this state in accordance with this section and the resulting cessation of its existence as a domestic limited partnership pursuant to a certificate of conversion to foreign business entity shall not be

deemed to affect any obligations or liabilities of the limited partnership incurred before the conversion or the personal liability of any person incurred before the conversion, nor shall it be deemed to affect the choice of law applicable to the limited partnership with respect to matters arising before the conversion. 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 members who would be exposed to personal liability.

SECTION 28. AMENDATORY 54 O.S. 2001, Section 311.1, is amended to read as follows:

Section 311.1

ANNUAL CERTIFICATE FOR DOMESTIC LIMITED PARTNERSHIP AND FOREIGN LIMITED PARTNERSHIP

A. Every domestic limited partnership and every foreign limited partnership registered to do business in this state shall file a certificate each year in the Office of the Secretary of State which shall confirm it is an active business and include its current ~~mailing~~ office address where the records of the partnership are kept.

B. The annual certificate shall be due on ~~July 1~~ the anniversary date of filing the certificate following the close of the calendar year until the cancellation of the articles of organization.

C. The Secretary of State shall, at least sixty (60) days prior to ~~July 1~~ the anniversary date of filing the certificate of each year, cause to be mailed a notice of the annual certificate to each domestic limited partnership and each foreign limited partnership required to comply with the provisions of this section ~~in care of its registered agent; or, if there is no agent listed upon the~~

~~records of the Secretary of State~~, to the last known ~~mailing~~ office address of the limited partnership.

D. A domestic limited partnership or foreign limited partnership that neglects, refuses or fails to file the annual certificate 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.

E. 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 file the annual certificate with the Secretary of State may 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 filing of the annual certificate for each year for which the domestic limited partnership or foreign limited partnership neglected, refused or failed to file the annual certificate within three (3) years from the date it is due.

F. A domestic limited partnership that has ceased to be in good standing by reason of its neglect, refusal or failure to file an annual certificate with the Secretary of State or pay the registered agent fee to the Secretary of State shall remain a domestic limited partnership 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 to any domestic limited partnership or foreign limited partnership which has neglected, refused or failed to file an annual certificate, and shall not issue any certificate of good standing with respect to the domestic limited partnership or foreign limited partnership, unless or 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.

G. 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 file an annual certificate or pay an annual registered agent fee to the Secretary of State may not maintain any action, suit or proceeding in any court of this state until such 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 filed its annual certificate with the Secretary of State or paid its registered agent fee to the Secretary of State then due and payable, together with penalties.

H. The neglect, refusal or failure of a domestic limited partnership or foreign limited partnership to file an annual certificate or pay a 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 partnership or foreign limited partnership or prevent the domestic limited partnership or foreign limited partnership from defending any action, suit or proceeding with any court of this state.

I. 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 the domestic limited partnership or foreign limited partnership to file an annual certificate or pay a 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 29. This act shall become effective November 1, 2005.

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