

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

Act 408 of the Regular Session

1 State of Arkansas
2 87th General Assembly
3 Regular Session, 2009
4

As Engrossed: H3/2/09

A Bill

HOUSE BILL 1462

5 By: Representative J. Edwards
6 By: Senator R. Thompson
7
8

For An Act To Be Entitled

10 AN ACT TO AMEND THE ARKANSAS BUSINESS CORPORATION
11 ACT, § 4-26-101 ET SEQ., THE ARKANSAS BUSINESS
12 CORPORATION ACT, § 4-27-101 ET SEQ., THE SMALL
13 BUSINESS ENTITY TAX PASS THROUGH ACT, § 4-32-101
14 ET SEQ., AND § 4-46-101 ET SEQ. ENACTING THE
15 UNIFORM PARTNERSHIP ACT (1996) TO ALLOW ANY
16 BUSINESS ENTITY TO CONVERT TO OR MERGE WITH ANY
17 OTHER BUSINESS ENTITY; TO MAKE RELATED TECHNICAL
18 CORRECTIONS; AND FOR OTHER PURPOSES.

Subtitle

21 TO ALLOW THE MERGER OR CONVERSION OF ANY
22 FORM OF A BUSINESS ENTITY INTO ANY OTHER
23 BUSINESS ENTITY.
24
25

26 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
27

28 SECTION 1. Arkansas Code Title 4, Chapter 26, Subchapter 10 is amended
29 to read as follows:

30 ~~4-26-1001. Domestic corporations—Procedure for merger.~~

31 ~~(a) Any two (2) or more domestic corporations may merge into one (1)~~
32 ~~of the corporations pursuant to a plan of merger approved in the manner~~
33 ~~provided in this chapter.~~

34 ~~(b) The board of directors of each corporation, by resolution adopted~~
35 ~~by each board, shall approve a plan of merger setting forth:~~



1 ~~(1) The names of the corporations proposing to merge and the~~
2 ~~name of the corporation into which they propose to merge, which is~~
3 ~~hereinafter designated as the surviving corporation;~~

4 ~~(2) The terms and conditions of the proposed merger;~~

5 ~~(3) The manner and basis of converting the shares of each~~
6 ~~merging corporation into shares or other securities or obligations of the~~
7 ~~surviving corporation or of any other corporation or, in whole or in part,~~
8 ~~into cash or other property;~~

9 ~~(4) A statement of any changes in the articles of incorporation~~
10 ~~of the surviving corporation to be effected by such merger;~~

11 ~~(5) The time when the merger shall become effective;~~

12 ~~(6) Other provisions with respect to the proposed merger as are~~
13 ~~deemed necessary or desirable.~~

14
15 ~~4-26-1002. Domestic corporations — Procedure for consolidation.~~

16 ~~(a) Any two (2) or more domestic corporations may consolidate into a~~
17 ~~new corporation pursuant to a plan of consolidation approved in the manner~~
18 ~~provided in this chapter.~~

19 ~~(b) The board of directors of each corporation, by a resolution~~
20 ~~adopted by each board, shall approve a plan of consolidation setting forth:~~

21 ~~(1) The names of the corporations proposing to consolidate and~~
22 ~~the name of the new corporation into which they propose to consolidate, which~~
23 ~~is hereinafter designated as the new corporation;~~

24 ~~(2) The terms and conditions of the proposed consolidations;~~

25 ~~(3) The manner and basis of converting the shares of each~~
26 ~~corporation into shares or other securities or obligations of the new~~
27 ~~corporation or of any other corporation or, in whole or in part, into cash or~~
28 ~~other property;~~

29 ~~(4) With respect to the new corporation, all of the statements~~
30 ~~required to be set forth in articles of incorporation for corporations~~
31 ~~organized under this chapter;~~

32 ~~(5) The time when the consolidation shall become effective;~~

33 ~~(6) Other provisions with respect to the proposed consolidation~~
34 ~~as are deemed necessary or desirable.~~

35
36 ~~4-26-1003. Domestic corporations — Approval of plan of merger or~~

1 consolidation by shareholders—Abandonment.

2 (a)—The board of directors of each corporation, upon approving the
3 plan of merger or plan of consolidation, shall, by resolution, direct that
4 the plan be submitted to a vote at a meeting of shareholders, which may be
5 either an annual or a special meeting.

6 (b)—Written or printed notice shall be given to each shareholder of
7 record not less than twenty (20) days before the meeting in the manner
8 provided in this chapter for the giving of notice of meetings of shareholders
9 and shall state the purpose of the meeting, whether the meeting be an annual
10 or a special meeting. A copy or a summary of the plan of merger or plan of
11 consolidation, as the case may be, shall be included in or enclosed with the
12 notice.

13 (c)(1)—At each meeting, a vote of the shareholders shall be taken on
14 the proposed plan of merger or consolidation.

15 (2)—Each outstanding share of each corporation shall be entitled
16 to vote on the proposed plan of merger or consolidation, whether or not such
17 share has voting rights under the provisions of the articles of incorporation
18 of the corporation.

19 (d)(1)—The plan of merger or consolidation shall be approved upon
20 receiving the affirmative vote of the holders of at least two thirds (2/3) of
21 the outstanding shares of each corporation, unless any class of shares of any
22 corporation is entitled to vote as a class thereon, in which event, as to
23 that corporation, the plan of merger or consolidation shall be approved upon
24 receiving the affirmative vote of the holders of at least two thirds (2/3) of
25 the outstanding shares of each class of shares entitled to vote as a class
26 thereon and of the total outstanding shares.

27 (2)—Any class of shares of any such corporation shall be
28 entitled to vote as a class if the plan of merger or consolidation, as the
29 case may be, contains any provision which, if contained in a proposed
30 amendment to articles of incorporation, would entitle the class of shares to
31 vote as a class.

32 (e)—After the approval by a vote of the shareholders of each
33 corporation and at any time prior to the filing of the articles of merger or
34 consolidation, the merger or consolidation may be abandoned pursuant to
35 provisions therefor, if any, set forth in the plan of merger or
36 consolidation.

1
2 ~~4-26-1004. Domestic corporations—Articles of merger or~~
3 ~~consolidation.~~

4 ~~Upon approval, articles of merger or articles of consolidation shall be~~
5 ~~executed by each corporation and filed in accordance with § 4-26-1201, which~~
6 ~~articles shall be verified by one of the officers of each corporation signing~~
7 ~~the same and shall set forth:~~

8 ~~(1) The plan of merger or the plan of consolidation, including~~
9 ~~the time when it shall become effective;~~

10 ~~(2) As to each corporation, the number of shares outstanding~~
11 ~~and, if the shares of any class are entitled to vote as a class, the~~
12 ~~designation and number of outstanding shares of each such class;~~

13 ~~(3) As to each corporation, the number of shares voted for and~~
14 ~~against the plan, respectively, and, if the shares of any class are entitled~~
15 ~~to vote as a class, the number of shares of each class voted for and against~~
16 ~~the plan, respectively.~~

17
18 ~~4-26-1005. Domestic corporations—Effect of merger or consolidation.~~

19 ~~(a) The merger or consolidation shall become effective upon the filing~~
20 ~~in accordance with § 4-26-1201 of the articles of merger or consolidation or~~
21 ~~at such time, not more than sixty (60) days after the filing, as may be~~
22 ~~specified in the articles as the time when the merger or consolidation shall~~
23 ~~become effective.~~

24 ~~(b) When the merger or consolidation has been effected:~~

25 ~~(1) The several corporations parties to the plan of merger or~~
26 ~~consolidation shall be a single corporation which, in the case of a merger,~~
27 ~~shall be that corporation designated in the plan of merger as the surviving~~
28 ~~corporation and, in the case of a consolidation, shall be the new corporation~~
29 ~~provided for in the plan of consolidation.~~

30 ~~(2) Subject to § 4-26-1008, the separate existence of all~~
31 ~~corporations parties to the plan of merger or consolidation, except the~~
32 ~~surviving or new corporation, shall cease.~~

33 ~~(3) The surviving or new corporation shall have all the rights,~~
34 ~~privileges, immunities, and powers and shall be subject to all the duties and~~
35 ~~liabilities of a corporation organized under this chapter.~~

36 ~~(4) The surviving or new corporation shall possess all the~~

1 ~~rights, privileges, immunities, and franchises, of a public as well as of a~~
2 ~~private nature, of each of the merging or consolidating corporations.~~

3 ~~(5) All real, personal, and mixed property and all debts due on~~
4 ~~whatever account, including subscriptions to shares, and all other choses in~~
5 ~~action, and all and every other interest, of or belonging to or due to each~~
6 ~~of the corporations so merged or consolidated, shall be taken and deemed to~~
7 ~~be transferred to and vested in the single corporation without further act or~~
8 ~~deed. The title to any real estate, or any interest therein, vested in any of~~
9 ~~the corporations shall not revert or be in any way impaired by reason of the~~
10 ~~merger or consolidation.~~

11 ~~(6) Such surviving or new corporation shall henceforth be~~
12 ~~responsible and liable for all the liabilities and obligations of each of the~~
13 ~~corporations so merged or consolidated. Any claim existing or action or~~
14 ~~proceeding pending by or against any of such corporations may be prosecuted~~
15 ~~as if the merger or consolidation had not taken place, or such surviving or~~
16 ~~new corporation may be substituted in its place. Neither the rights of~~
17 ~~creditors nor any liens upon the property of any such corporation shall be~~
18 ~~impaired by the merger or consolidation.~~

19 ~~(7) In the case of a merger, the articles of incorporation of~~
20 ~~the surviving corporation shall be deemed to be amended to the extent, if~~
21 ~~any, that changes in its articles of incorporation are stated in the plan of~~
22 ~~merger. In the case of a consolidation, the statements set forth in the~~
23 ~~articles of consolidation and which are required or permitted to be set forth~~
24 ~~in the articles of incorporation of corporations organized under this chapter~~
25 ~~shall be deemed to be the original articles of incorporation of the new~~
26 ~~corporation.~~

27 ~~(8) The surplus accounts of the surviving or new corporation in~~
28 ~~case of a merger or consolidation shall be subject to § 4-26-607.~~

29
30 ~~4-26-1006. Merger or consolidation of domestic and foreign~~
31 ~~corporations.~~

32 ~~(a) One (1) or more foreign corporations and one (1) or more domestic~~
33 ~~corporations may be merged or consolidated in the following manner if the~~
34 ~~merger or consolidation is permitted by the laws of the state or country~~
35 ~~under which each foreign corporation is organized.~~

36 ~~(1) Each domestic corporation shall comply with the provisions~~

1 of this chapter with respect to the merger or consolidation, as the case may
2 be, of domestic corporations, and each foreign corporation shall comply with
3 the applicable provisions of the laws of the state or country under which it
4 is organized.

5 (2) If the surviving or new corporation, as the case may be, is
6 to be governed by the laws of any state or country other than this state, it
7 shall comply with the laws of Arkansas with respect to the admission of
8 foreign corporations if it is to transact business in this state, and
9 moreover, it shall file with the Secretary of State of this state:

10 (A) An agreement that it may be served with process in
11 this state in any proceeding for the enforcement of any obligation of any
12 domestic corporation which is a party to the merger or consolidation and in
13 any proceeding for the enforcement of the rights of a dissenting shareholder
14 of any domestic corporation against the surviving or new corporation;

15 (B) An irrevocable appointment of the Secretary of State
16 of this state as its agent to accept service of process in any proceeding;
17 and

18 (C) An agreement that it will promptly pay to the
19 dissenting shareholders of any domestic corporation the amount, if any, to
20 which they shall be entitled under the provisions of this chapter with
21 respect to the rights of dissenting shareholders.

22 (b) The effect of the merger or consolidation shall be the same as in
23 the case of the merger or consolidation of domestic corporations if the
24 surviving or new corporation is to be governed by the laws of this state. If
25 the surviving or new corporation is to be governed by the laws of any state
26 or country other than this state, the effect of this merger or consolidation
27 shall be the same as in the case of the merger or consolidation of domestic
28 corporations except insofar as the laws of the other state provide otherwise.
29

30 ~~4-26-1007. Rights of dissenting shareholders.~~

31 (a) If a shareholder of a corporation which is a party to a merger or
32 consolidation files with the corporation, prior to or at the meeting of
33 shareholders at which the plan of merger or consolidation is submitted to a
34 vote, a written objection to the plan of merger or consolidation and does not
35 vote in favor thereof, and the shareholder within ten (10) days after the
36 date on which the vote was taken makes written demand on the surviving or new

1 ~~domestic or foreign corporation for payment of the fair value of his shares~~
2 ~~as of the day prior to the date on which the vote was taken approving the~~
3 ~~merger or consolidation, then, if the merger or consolidation is effected,~~
4 ~~the surviving or new corporation shall pay to the shareholder, upon surrender~~
5 ~~of his certificate or certificates representing the shares, the fair value~~
6 ~~thereof.~~

7 ~~(b) The demand shall state the number and class of the shares owned by~~
8 ~~the dissenting shareholder.~~

9 ~~(c) Any shareholder failing to make demand within the ten-day period~~
10 ~~shall be bound by the terms of the merger or consolidation.~~

11 ~~(d) Within ten (10) days after the merger or consolidation is~~
12 ~~effected, the surviving or new corporation, as the case may be, shall give~~
13 ~~notice to each dissenting shareholder who has made demand as herein provided~~
14 ~~for the payment of the fair value of his shares.~~

15 ~~(e)(1) If within thirty (30) days after the date on which the merger~~
16 ~~or consolidation was effected the value of such shares is agreed upon between~~
17 ~~the dissenting shareholder and the surviving or new corporation, payment~~
18 ~~shall be made within ninety (90) days after the date on which such merger or~~
19 ~~consolidation was effected, upon the surrender of his certificate or~~
20 ~~certificates representing those shares.~~

21 ~~(2) Upon payment of the agreed value, the dissenting shareholder~~
22 ~~shall cease to have any interest in those shares or in the corporation.~~

23 ~~(f)(1) If within the period of thirty (30) days the shareholder and~~
24 ~~the surviving or new corporation do not so agree, then the dissenting~~
25 ~~shareholder, within sixty (60) days after the expiration of the thirty-day~~
26 ~~period, may file a petition in the circuit court of the county in which the~~
27 ~~registered office of the surviving corporation is located, if the surviving~~
28 ~~corporation is a domestic corporation or in the Pulaski County Circuit Court~~
29 ~~if the surviving corporation is a foreign corporation, asking for a finding~~
30 ~~and determination of the fair value of the shares and shall be entitled to~~
31 ~~judgment against the surviving or new corporation for the amount of the fair~~
32 ~~value as of the day prior to the date on which the vote was taken approving~~
33 ~~such merger or consolidation, together with interest thereon to the date of~~
34 ~~the judgment.~~

35 ~~(2) The judgment shall be payable only upon and simultaneously~~
36 ~~with the surrender to the surviving or new corporation of the certificate or~~

1 ~~certificates representing the shares.~~

2 ~~(3) Upon payment of the judgment, the dissenting shareholder~~
3 ~~shall cease to have any interest in the shares or in the surviving or new~~
4 ~~corporation.~~

5 ~~(4) Unless the dissenting shareholder files the petition within~~
6 ~~the time herein limited, the shareholder and all persons claiming under him~~
7 ~~shall be bound by the terms of the merger or consolidation.~~

8 ~~(g) Shares acquired by the surviving or new corporation pursuant to~~
9 ~~the payment of the agreed value thereof or to payment of the judgment~~
10 ~~entered, as in this section provided, may be held and disposed of by the~~
11 ~~corporation as in the case of other treasury shares.~~

12 ~~(h) The provisions of this section shall not apply to a merger if, on~~
13 ~~the date of the filing of the articles of merger, the surviving corporation~~
14 ~~is the owner of all the outstanding shares of the other domestic or foreign~~
15 ~~corporations that are parties to the merger.~~

16
17 ~~4-26-1008. Continuance of corporate existence in aid of title~~
18 ~~transfers.~~

19 ~~(a)(1) The corporate existence of each constituent corporation which~~
20 ~~has been dissolved through merger or consolidation shall be continued~~
21 ~~indefinitely without franchise tax liability for the limited purpose of~~
22 ~~enabling the constituent corporation to execute, through its own officers,~~
23 ~~formal deeds, conveyances, assignments, and other instruments evidencing the~~
24 ~~transfer from the constituent to the surviving corporation, or new~~
25 ~~corporation created by consolidation, of any or all real and personal~~
26 ~~properties which have passed from the constituent to the surviving or~~
27 ~~consolidated corporation by operation of law.~~

28 ~~(2) The execution of the instruments shall not be essential to~~
29 ~~effect the transfer of title from the constituent to the surviving or~~
30 ~~consolidated corporation inasmuch as the transfer will take effect through~~
31 ~~operation of law; but the power to execute the instruments is given to the~~
32 ~~end that it may be exercised in respect to properties located in foreign~~
33 ~~jurisdictions which may not recognize a transmittal of title by operation of~~
34 ~~law under the merger and consolidation statutes of this state and in any~~
35 ~~other situation where the directors of the surviving or consolidated~~
36 ~~corporation consider the execution of the instruments desirable.~~

1 ~~(b)(1) This state will recognize and give effect to a transfer of~~
2 ~~personal property having a situs in this state which is effected by operation~~
3 ~~of the laws of another state through a corporate merger or consolidation at~~
4 ~~any time conducted under the laws of such other state or states.~~

5 ~~(2)(A) This state will recognize and give effect to a transfer~~
6 ~~of title to real estate located in this state effected by operation of law~~
7 ~~through such a merger or consolidation conducted under the laws of one (1) or~~
8 ~~more other states on condition that one of the following, certified by the~~
9 ~~secretary of the state in which the surviving or consolidated corporation is~~
10 ~~domiciled, shall be filed for record with the Secretary of State of this~~
11 ~~state:~~

12 ~~(i) A copy of the agreement of merger or~~
13 ~~consolidation, executed between the merging or consolidating corporations; or~~

14 ~~(ii) A copy of the certificate of merger executed by~~
15 ~~the surviving corporation as evidence of a vertical or downstream merger of a~~
16 ~~subsidiary by a parent corporation.~~

17 ~~(B) The Secretary of State shall receive the filing~~
18 ~~whether or not the surviving or consolidated corporation desires to be~~
19 ~~admitted to this state.~~

20
21 ~~4-26-1009. Merger of subsidiary by parent.~~

22 ~~(a)(1) Any corporation owning at least ninety five percent (95%) of~~
23 ~~the outstanding shares of each class of another corporation may merge the~~
24 ~~other corporation into itself without approval by a vote of the shareholders~~
25 ~~of either corporation.~~

26 ~~(2) Its board of directors shall, by resolution, approve a plan~~
27 ~~of merger setting forth:~~

28 ~~(A) The name of the subsidiary corporation and the name of~~
29 ~~the corporation owning at least ninety five percent (95%) of its shares,~~
30 ~~which is hereinafter designated as the surviving corporation;~~

31 ~~(B) The manner and basis of converting the shares of the~~
32 ~~subsidiary corporation into shares or other securities or obligations of the~~
33 ~~surviving corporation or the cash or other consideration to be paid or~~
34 ~~delivered upon surrender of each share of the subsidiary corporation.~~

35 ~~(3) A copy of the plan of merger shall be mailed to each~~
36 ~~shareholder of record of the subsidiary corporation.~~

1 ~~(b) Articles of merger shall be executed by the surviving corporation~~
2 ~~in accordance with § 4-26-1201 and shall be verified by one (1) of the~~
3 ~~officers signing the same, and shall set forth:~~

4 ~~(1) The plan of merger, including the time when it shall become~~
5 ~~effective;~~

6 ~~(2) The number of outstanding shares of each class of the~~
7 ~~subsidiary corporation and the number of shares of each class owned by the~~
8 ~~surviving corporation; and~~

9 ~~(3) The date of the mailing to shareholders of the subsidiary~~
10 ~~corporation of a copy of the plan of merger.~~

11 ~~(c) On and after the thirtieth day after the mailing of a copy of the~~
12 ~~plan of merger to shareholders of the subsidiary corporation, or upon the~~
13 ~~waiver thereof by the holders of all outstanding shares, the articles of~~
14 ~~merger shall be filed with the Secretary of State in accordance with § 4-26-~~
15 ~~1201, and the merger shall become effective upon the filing or at such other~~
16 ~~time, not more than sixty (60) days after the filing, as may be specified in~~
17 ~~the articles as the time when the merger shall become effective.~~

18 ~~(d)(1) In the event that all of the stock of a subsidiary Arkansas~~
19 ~~corporation party to a merger effected under this section is not owned by the~~
20 ~~parent corporation immediately prior to the merger, the surviving~~
21 ~~corporation, within ten (10) days after the date on which articles of merger~~
22 ~~have been filed in accordance with § 4-26-1201, shall notify each shareholder~~
23 ~~of the Arkansas corporation that the articles of merger have been filed and~~
24 ~~of the terms and conditions of the merger.~~

25 ~~(2) The notice shall be sent by certified or registered mail,~~
26 ~~return receipt requested, addressed to the shareholder at his last known~~
27 ~~address as it appears on the books of the corporation.~~

28 ~~(3) If any such shareholder, within ten (10) days after the date~~
29 ~~of mailing of the notice, objects in writing to the merger and demands in~~
30 ~~writing from the surviving corporation payment for his stock, the surviving~~
31 ~~corporation, within thirty (30) days after the expiration of the period of~~
32 ~~ten (10) days, shall pay to him the value of his stock as of the day prior to~~
33 ~~the date on which the articles of merger were filed, exclusive of any element~~
34 ~~of value arising from the expectation or accomplishment of said merger.~~

35 ~~(4) If, during the period of thirty (30) days provided for~~
36 ~~herein, the surviving corporation and any objecting shareholder fail to agree~~

1 as to the value of the stock, any such shareholder, within sixty (60) days
2 after the expiration of the thirty day period, may file a petition as
3 provided in § 4-26-1007(f)(1) asking for a finding and determination of the
4 fair value of the shares and shall be entitled to judgment against the
5 surviving corporation for the amount of the fair value as of the day prior to
6 the date on which the articles of merger were filed, together with interest
7 thereon to the date of the judgment.

8 (5) The judgment shall be payable only upon and simultaneously
9 with the surrender to the surviving corporation of the certificate or
10 certificates representing the shares.

11 (6) Upon payment of the judgment, the objecting shareholder
12 shall cease to have any interest in the shares or in the surviving
13 corporation.

14 (7) Unless the objecting shareholder files the petition within
15 the time herein limited, the shareholder and all persons claiming under him
16 shall be bound by the terms of the merger.

17 (e) Shares acquired by the surviving corporation pursuant to the
18 payment of the agreed value thereof or to payment of the judgment entered
19 therefor as in this section provided may be held and disposed of by the
20 corporation as in the case of other treasury shares.

21
22 SUBCHAPTER 10 – Conversion and Merger.

23 4-26-1001. Definitions.

24 As used in this subchapter:

25 (1) “Constituent corporation” means a constituent organization
26 that is a corporation;

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

29 (3) “Converted organization” means the organization into which a
30 converting organization converts under §§ 4-26-1002 through 4-26-1005;

31 (4) “Converting corporation” means a converting organization
32 that is a corporation;

33 (5) “Converting organization” means an organization that
34 converts into another organization under § 4-26-1002;

35 (6) “Governing statute” of an organization means the statute
36 that governs the organization’s internal affairs;

1 (7) “In a record” means maintained or kept on file by the
2 organization at an office of the organization or with the Secretary of State;

3 (8)(A) “Organization” means:

4 (i) A partnership, including a limited liability
5 partnership;

6 (ii) A limited partnership, including a limited
7 liability limited partnership;

8 (iii) A limited liability company;

9 (iv) A business trust;

10 (v) A corporation; or

11 (vi) Any other entity that has a governing statute.

12 (B) “Organization” includes a domestic or foreign
13 organization whether or not the organization is organized for profit;

14 (9) “Organizational documents” means:

15 (A) For a domestic or foreign general partnership, its
16 partnership agreement and, if applicable, statement of qualification;

17 (B) For a domestic or foreign limited partnership, its
18 certificate of limited partnership and partnership agreement;

19 (C) For a domestic or foreign limited liability company,
20 its articles of organization and operating agreement or the comparable
21 records provided for in its governing statute;

22 (D) For a business trust, its agreement of trust and
23 declaration of trust;

24 (E) For a domestic or foreign corporation for profit, its
25 articles of incorporation, bylaws, and agreements among its shareholders that
26 are authorized by its governing statute or the comparable records provided
27 for in its governing statute; and

28 (F) For any other organization, the records that:

29 (i) Create the organization;

30 (ii) Determine the internal governance of the
31 organization; and

32 (iii) Determine the relations among the
33 organization’s owners, members, and interested parties; and

34 (10) “Surviving organization” means an organization into which
35 one (1) or more other organizations are merged.

36

1 4-26-1002. Conversion.

2 (a) An organization other than a corporation may convert to a
3 corporation, and a corporation may convert to another organization under this
4 section and §§ 4-26-1003 through 4-26-1005 and a plan of conversion if the:

5 (1) Other organization's governing statute authorizes the
6 conversion and is complied with; and

7 (2) Conversion is not prohibited by the law of the jurisdiction
8 that enacted the governing statute.

9 (b) A plan of conversion must be in a record and must include the:

10 (1) Name and form of the organization before conversion;

11 (2) Name and form of the organization after conversion;

12 (3) Terms and conditions of the conversion, including the manner
13 and basis for converting interests in the converting organization into any
14 combination of money, interests in the converted organization, and other
15 consideration; and

16 (4) Organizational documents of the converted organization.

17
18 4-26-1003. Action on plan of conversion by converting corporation.

19 (a) A plan of conversion may be approved if the:

20 (1) Board of directors recommends the plan of conversion to the
21 shareholders, unless the board of directors:

22 (A) Determines that because of a conflict of interest or
23 other special circumstances it should make no recommendation; and

24 (B) Communicates the basis for its determination at the
25 time the plan of conversion is submitted to the shareholders; and

26 (2) Shareholders approve the plan by the affirmative vote of the
27 holders of at least two-thirds (2/3) of the outstanding shares entitled to
28 vote.

29 (b) The board of directors may condition its submission of the
30 proposed conversion on any basis.

31 (c)(1) The corporation shall notify each shareholder, whether or not
32 entitled to vote, of the proposed shareholders' meeting:

33 (A) Not less than twenty (20) days before the meeting; and

34 (B) In the manner provided in § 4-26-703 for giving notice
35 of meetings of shareholders.

36 (2) The notice shall:

1 (A) State that a purpose of the meeting is to consider the
2 plan of conversion; and

3 (B) Contain or be accompanied by a copy or summary of the
4 plan.

5 (d) Unless this chapter, the articles of incorporation, or the board
6 of directors acting under subsection (b) of this section require a greater
7 vote or a vote by voting groups, the plan of conversion to be authorized must
8 be approved by each voting group entitled to vote separately on the plan by
9 at least two-thirds (2/3) of all the votes entitled to be cast on the plan by
10 the voting group.

11 (e) Subject to any contractual rights, until a conversion is filed
12 under § 4-26-1004, a converting corporation may amend the plan or abandon the
13 planned conversion:

14 (1) As provided in the plan; and

15 (2) Except as prohibited by the plan, by the same consent
16 required to approve the plan.

17
18 4-26-1004. Filings required for conversion – Effective date.

19 (a)(1) After a plan of conversion is approved a converting corporation
20 shall file articles of conversion with the Secretary of State.

21 (2) The articles of conversion shall include:

22 (A) A statement that the corporation has been converted
23 into another organization;

24 (B) The name and form of the converted organization and
25 the jurisdiction of its governing statute;

26 (C) The date the conversion is effective under the
27 governing statute of the converted organization;

28 (D) A statement that the conversion was approved as
29 required by this chapter;

30 (E) A statement that the conversion was approved as
31 required by the governing statute of the converted organization;

32 (F) A statement confirming that the converted organization
33 has filed a statement appointing an agent for service of process under § 4-
34 20-112 if the converted organization is a foreign organization not authorized
35 to transact business in this state; and

36 (G)(i) A copy of the plan of conversion; or

1 (ii) A statement that:

2 (a) Contains the address of an office of the
3 organization where the plan of conversion is on file; and

4 (b) A copy of the plan of conversion will be
5 furnished by the converting corporation on request and without cost to any
6 shareholder of the converting corporation.

7 (b)(1) If the converting organization is not a converting corporation,
8 the converting organization shall file articles of incorporation with the
9 Secretary of State.

10 (2) The articles of incorporation shall include, in addition to
11 the information required by § 4-26-202:

12 (A) A statement that the corporation was converted from
13 another organization;

14 (B) The name and form of the converting organization and
15 the jurisdiction of its governing statute; and

16 (C) A statement that the conversion was approved in a
17 manner that complied with the converting organization's governing statute.

18 (c) A conversion becomes effective:

19 (1) If the converted organization is a corporation, when the
20 articles of incorporation take effect; and

21 (2) If the converted organization is not a corporation, as
22 provided by the governing statute of the converted organization.

23
24 4-26-1005. Effect of conversion.

25 (a) An organization that has been converted under this subchapter is
26 for all purposes the same entity that existed before the conversion.

27 (b) When a conversion takes effect:

28 (1) All property owned by the converting organization remains
29 vested in the converted organization;

30 (2) All debts, liabilities, and other obligations of the
31 converting organization continue as obligations of the converted
32 organization;

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

35 (4) Except as prohibited by other law, all of the rights,
36 privileges, immunities, powers, and purposes of the converting organization

1 remain vested in the converted organization;

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

4 (6) Except as otherwise agreed, the conversion does not dissolve
5 a converting corporation under § 4-26-1101 et seq.

6 (c)(1) A converted organization that is a foreign organization
7 consents to the jurisdiction of the courts of this state to enforce any
8 obligation owed by the converting corporation if before the conversion the
9 converting corporation was subject to suit in this state on the obligation.

10 (2) A converted organization that is a foreign organization and
11 not authorized to transact business in this state may be served with process
12 under § 4-20-113 if the converted organization:

13 (A) Fails to appoint an agent for service of process under
14 § 4-20-112;

15 (B) No longer has an agent for service of process; or

16 (C) Has an agent for service of process that cannot with
17 reasonable diligence be served.

18 4-26-1006. Merger.

19 (a) A corporation may merge with one (1) or more other constituent
20 organizations under this section and §§ 4-26-1007 through 4-26-1010 and a
21 plan of merger if:

22 (1) The governing statute of each of the other organizations
23 authorizes the merger;

24 (2) The merger is not prohibited by the law of a jurisdiction
25 that enacted the governing statute; and

26 (3) Each of the other organizations complies with its governing
27 statute in effecting the merger.

28 (b) A plan of merger shall be in a record and shall include:

29 (1) The name and form of each constituent organization;

30 (2) The name and form of the surviving organization;

31 (3) The terms and conditions of the merger, including the manner
32 and basis for converting the interests in each constituent organization into
33 any combination of money, interests in the surviving organization, and other
34 consideration; and

35 (4) Any amendments to be made by the merger to the surviving
36 organization's organizational documents.

1
2 4-26-1007. Action on plan of merger by constituent corporation.

3 (a) Except as provided in subsection (g) of this section and after
4 adopting a plan of merger, the board of directors of each corporation which
5 is a party to the merger shall submit the plan of merger for approval by its
6 shareholders.

7 (b) A plan of merger may be approved if the:

8 (1) Board of directors recommends the plan of merger to the
9 shareholders, unless the board of directors:

10 (A) Determines that because of a conflict of interest or
11 other special circumstances it should make no recommendation; and

12 (B) Communicates the basis for its determination at the
13 time the plan of merger is submitted to the shareholders; and

14 (2) The shareholders entitled to vote approve the plan.

15 (c) The board of directors may condition its submission of the
16 proposed merger on any basis.

17 (d)(1) The corporation shall notify each shareholder, whether or not
18 entitled to vote, of the proposed shareholders' meeting:

19 (A) Not less than twenty (20) days before the meeting; and

20 (B) In the manner provided in § 4-26-703 for giving notice
21 of meetings of shareholders.

22 (2) The notice shall:

23 (A) State that a purpose of the meeting is to consider the
24 plan of merger; and

25 (B) Contain or be accompanied by a copy or summary of the
26 plan.

27 (e) Unless this chapter, the articles of incorporation, or the board
28 of directors acting under subsection (c) of this section require a greater
29 vote or a vote by voting groups, the plan of merger to be authorized must be
30 approved by the affirmative vote of the holders of at least two-thirds (2/3)
31 of the outstanding shares entitled to vote, and if by voting group, by each
32 voting group entitled to vote separately on the plan by at least two-thirds
33 (2/3) of all the votes entitled to be cast on the plan by the voting group.

34 (f) Separate voting by voting groups is required on a plan of merger
35 if the plan contains a provision that, if contained in a proposed amendment
36 to the articles of incorporation, would require action by one (1) or more

1 separate voting groups on the proposed amendment under § 4-26-303.

2 (g) Action by the shareholders of the surviving corporation on a plan
3 of merger is not required if:

4 (1) The articles of incorporation of the surviving corporation
5 will not differ except for amendments enumerated in § 4-26-307 from its
6 articles before the merger;

7 (2) Each shareholder of the surviving corporation whose shares
8 were outstanding immediately before the effective date of the merger will
9 hold the same number of shares or the interest comparable to shares in an
10 entity other than a corporation, with identical designations, preferences,
11 limitations, and relative rights, immediately after the merger;

12 (3) The number of voting shares outstanding immediately after
13 the merger plus the number of voting shares issuable as a result of the
14 merger either by the conversion of securities issued pursuant to the merger
15 or the exercise of rights and warrants issued pursuant to the merger, will
16 not exceed by more than twenty percent (20%) the total number of voting
17 shares of the surviving corporation outstanding immediately before the
18 merger; and

19 (4) The number of participating shares outstanding immediately
20 after the merger plus the number of participating shares issuable as a result
21 of the merger either by the conversion of securities issued pursuant to the
22 merger or the exercise of rights and warrants issued pursuant to the merger,
23 will not exceed by more than twenty percent (20%) the total number of
24 participating shares outstanding immediately before the merger.

25 (h) As used in subsection (g) of this section:

26 (1) "Participating shares" means shares that entitle their
27 holders to participate without limitation in distributions; and

28 (2) "Voting shares" means shares that entitle their holders to
29 vote unconditionally in elections of directors.

30 (i) Subject to any contractual rights, at any time before articles of
31 merger are filed the planned merger may be abandoned without further
32 shareholder action in accordance with the procedure set forth in the plan of
33 merger or, if none is set forth, in the manner determined by the board of
34 directors.

35
36 4-26-1008. Merger of subsidiary.

1 (a) A parent corporation owning at least ninety percent (90%) of the
2 outstanding shares of each class of a subsidiary corporation may merge the
3 subsidiary corporation into itself without approval of the shareholders of
4 the parent corporation or subsidiary corporation.

5 (b) The board of directors of the parent corporation shall adopt a
6 plan of merger that sets forth:

7 (1) The names of the parent corporation and the subsidiary
8 corporation; and

9 (2) The manner and basis of converting the shares of the
10 subsidiary corporation into:

11 (A) Shares, obligations, or other securities of the parent
12 corporation or any other corporation; or

13 (B) Cash or other property.

14 (c) The parent corporation shall mail a copy or summary of the plan of
15 merger to each shareholder of the subsidiary corporation who does not waive
16 the mailing requirement in writing.

17 (d) The parent corporation may not deliver articles of merger to the
18 Secretary of State for filing until at least thirty (30) days after the date
19 the parent corporation mailed a copy of the plan of merger to each
20 shareholder of the subsidiary corporation who did not waive the mailing
21 requirement.

22 (e) Articles of merger under this section may not contain amendments
23 to the articles of incorporation of the parent corporation except for
24 amendments enumerated in § 4-26-307.

25
26 4-26-1009. Filings required for merger – Effective date.

27 (a) After each constituent organization has approved a merger,
28 articles of merger must be signed by an authorized representative of each
29 constituent organization.

30 (b) The articles of merger shall include:

31 (1) The name and form of each constituent organization and the
32 jurisdiction of its governing statute;

33 (2) The name and form of the surviving organization and the
34 jurisdiction of its governing statute;

35 (3) The date the merger is effective under the governing statute
36 of the surviving organization;

1 (4) Any amendments provided for in the plan of merger for the
2 organizational document of the surviving organization;

3 (5) A statement as to each constituent organization that the
4 merger was approved as required by the organization's governing statute;

5 (6) A statement confirming that the surviving organization has
6 filed a statement appointing an agent for service of process under § 4-20-112
7 if the surviving organization is a foreign organization not authorized to
8 transact business in this state; and

9 (7)(A) A copy of the plan of merger; or

10 (B) A statement that:

11 (i) Contains the address of an office of the
12 surviving organization where the plan of merger is on file; and

13 (ii) A copy of the plan of merger will be furnished
14 by the surviving organization on request and without cost to any shareholder,
15 member, partner, or other owner of any constituent organization; and

16 (8) Any additional information required by the governing statute
17 of any constituent organization.

18 (c) Each constituent organization shall deliver the articles of merger
19 for filing in the office of the Secretary of State.

20 (d) A merger becomes effective under this subchapter:

21 (1) If the surviving organization is a corporation, upon the
22 later of:

23 (A) Compliance with subsection (c) of this section; or

24 (B) The date specified in the articles of merger; or

25 (2) If the surviving organization is not a corporation, as
26 provided by the governing statute of the surviving organization.

27
28 4-26-1010. Effect of merger.

29 (a) When a merger becomes effective:

30 (1) The surviving organization continues or comes into
31 existence;

32 (2) Each constituent organization that merges into the surviving
33 organization ceases to exist as a separate entity;

34 (3) All property owned by each constituent organization that
35 ceases to exist vests in the surviving organization;

36 (4) All debts, liabilities, and other obligations of each

1 constituent organization that ceases to exist continue as obligations of the
2 surviving organization;

3 (5) An action or proceeding pending by or against a constituent
4 organization that ceases to exist may continue as if the merger had not
5 occurred;

6 (6) Except as prohibited by other law, all of the rights,
7 privileges, immunities, powers, and purposes of each constituent organization
8 that ceases to exist vest in the surviving organization;

9 (7) Except as otherwise provided in the plan of merger, the
10 terms and conditions of the plan of merger take effect;

11 (8) Except as otherwise agreed, if a constituent corporation
12 ceases to exist, the merger does not dissolve the corporation for purposes of
13 § 4-26-1101 et seq.; and

14 (9) Any amendments provided for in the articles of merger for
15 the organizational documents of the surviving organization become effective.

16 (b)(1) A surviving organization that is a foreign organization
17 consents to the jurisdiction of the courts of this state to enforce any
18 obligation owed by a constituent organization if before the merger the
19 constituent organization was subject to suit in this state on the obligation.

20 (2) A surviving organization that is a foreign organization and
21 not authorized to transact business in this state may be served with process
22 under § 4-20-113 if the surviving organization:

23 (A) Fails to appoint an agent for service of process under
24 § 4-20-112;

25 (B) No longer has an agent for service of process; or

26 (C) Has an agent for service of process that cannot with
27 reasonable diligence be served.

28
29 4-26-1011. Rights of dissenting shareholders.

30 (a) If a conversion or merger is effected under this subchapter, the
31 surviving or new organization shall pay to a shareholder of a corporation
32 that is a party to the conversion or merger the fair value of the
33 shareholder's shares, upon surrender of his or her certificate or
34 certificates representing the shares, if the shareholder:

35 (1) Files with the corporation before or at the meeting of
36 shareholders at which the plan of conversion or merger is submitted to a

1 vote, a written objection to the plan of conversion or merger;

2 (2) Does not vote in favor of the plan of conversion or merger;

3 and

4 (3) Within ten (10) days after the date on which the vote was
5 taken makes written demand on the surviving or new domestic or foreign
6 organization for payment of the fair value of his or her shares as of the day
7 before the date on which the vote was taken approving the conversion or
8 merger.

9 (b) The demand shall state the number and class of the shares owned by
10 the dissenting shareholder.

11 (c) A shareholder failing to make demand within the ten-day period
12 shall be bound by the terms of the conversion or merger.

13 (d) Within ten (10) days after the conversion or merger is effected,
14 the surviving or new organization shall give notice to each dissenting
15 shareholder who has made demand under this section for the payment of the
16 fair value of his or her shares.

17 (e)(1) If within thirty (30) days after the date on which the
18 conversion or merger was effected the value of the shares is agreed upon by
19 the dissenting shareholder and the surviving or new organization, payment
20 shall be made within ninety (90) days after the date on which the conversion
21 or merger was effected upon the surrender of the shareholder's certificate or
22 certificates representing the shares.

23 (2) Upon payment of the agreed value the dissenting shareholder
24 shall cease to have any interest in the shares or in the corporation.

25 (f)(1)(A) If within the period of thirty (30) days the shareholder and
26 the surviving or new organization do not agree to the value of the dissenting
27 shareholder's shares, then the dissenting shareholder within sixty (60) days
28 after the expiration of the thirty-day period may file a petition for a
29 finding and determination of the fair value of the shares and shall be
30 entitled to judgment against the surviving or new organization for the amount
31 of the fair value as of the day before to the date on which the vote was
32 taken approving such conversion or merger, together with interest thereon to
33 the date of the judgment.

34 (B) The petition shall be filed:

35 (i) In the circuit court of the county in which the
36 registered office of the surviving organization is located if the surviving

1 organization is a domestic organization; or

2 (ii) In the Pulaski County Circuit Court if the
3 surviving organization is a foreign organization.

4 (2) The judgment shall be payable only upon and simultaneously
5 with the surrender to the surviving or new organization of the certificate or
6 certificates representing the shares.

7 (3) Upon payment of the judgment the dissenting shareholder
8 shall cease to have any interest in the shares or in the surviving or new
9 organization.

10 (4) If a dissenting shareholder does not file a petition within
11 the time allowed by this section, the dissenting shareholder and all persons
12 claiming under the dissenting shareholder are bound by the terms of the
13 conversion or merger.

14 (g) Shares acquired by the surviving or new organization in payment of
15 the agreed value of the shares or a judgment under this section may be held
16 and disposed of by the organization as in the case of other treasury shares.

17 (h) This section does not apply to a conversion or merger if on the
18 date of filing the articles of conversion or merger, the surviving
19 organization is the owner of all outstanding shares of the other domestic or
20 foreign organizations that are parties to the conversion or merger.

21
22 4-26-1012. Chapter not exclusive.

23 This chapter does not preclude an organization from being converted or
24 merged under other law.

25
26 SECTION 2. Arkansas Code Title 4, Chapter 27, Subchapter 11 is amended
27 to read as follows:

28
29 SUBCHAPTER 11 – Conversion and Merger.

30 4-27-1101. Merger.

31 ~~(a) One (1) or more corporations may merge into another corporation if~~
32 ~~the board of directors of each corporation adopts and its shareholders (if~~
33 ~~required by § 4-27-1103) approve a plan of merger.~~

34 ~~(b) The plan of merger must set forth:~~

35 ~~(1) the name of each corporation planning to merge and the name~~
36 ~~of the surviving corporation into which each other corporation plans to~~

1 ~~merge;~~

2 ~~(2) the terms and conditions of the merger; and~~

3 ~~(3) the manner and basis of converting the shares of each~~
4 ~~corporation into shares, obligations, or other securities of the surviving or~~
5 ~~any other corporation or into cash or other property in whole or in part.~~

6 ~~(c) The plan of merger may set forth:~~

7 ~~(1) amendments to the articles of incorporation of the surviving~~
8 ~~corporation; and~~

9 ~~(2) other provisions relating to the merger.~~

10
11 ~~4-27-1102. Share exchange.~~

12 ~~(a) A corporation may acquire all of the outstanding shares of one (1)~~
13 ~~or more classes or series of another corporation if the board of directors of~~
14 ~~each corporation adopts and its shareholders (if required by § 4-27-1103)~~
15 ~~approve the exchange.~~

16 ~~(b) The plan of exchange must set forth:~~

17 ~~(1) the name of the corporation whose shares will be acquired~~
18 ~~and the name of the acquiring corporation;~~

19 ~~(2) the terms and conditions of the exchange;~~

20 ~~(3) the manner and basis of exchanging the shares to be acquired~~
21 ~~for shares, obligations, or other securities of the acquiring or any other~~
22 ~~corporation or for cash or other property in whole or in part.~~

23 ~~(c) The plan of exchange may set forth other provisions relating to~~
24 ~~the exchange.~~

25 ~~(d) This section does not limit the power of a corporation to acquire~~
26 ~~all or part of the shares of one (1) or more classes or series of another~~
27 ~~corporation through a voluntary exchange or otherwise.~~

28
29 ~~4-27-1103. Action on plan.~~

30 ~~(a) After adopting a plan of merger or share exchange, the board of~~
31 ~~directors of each corporation party to the merger, and the board of directors~~
32 ~~of the corporation whose shares will be acquired in the share exchange, shall~~
33 ~~submit the plan of merger (except as provided in subsection (g) of this~~
34 ~~section) or share exchange for approval by its shareholders.~~

35 ~~(b) For a plan of merger or share exchange to be approved:~~

36 ~~(1) the board of directors must recommend the plan of merger or~~

1 ~~share exchange to the shareholders, unless the board of directors determines~~
2 ~~that because of conflict of interest or other special circumstances it should~~
3 ~~make no recommendation and communicates the basis for its determination to~~
4 ~~the shareholders with the plan; and~~

5 ~~(2) the shareholders entitled to vote must approve the plan.~~

6 ~~(c) The board of directors may condition its submission of the~~
7 ~~proposed merger or share exchange on any basis.~~

8 ~~(d) The corporation shall notify each shareholder, whether or not~~
9 ~~entitled to vote, of the proposed shareholders' meeting in accordance with §~~
10 ~~4-27-705. The notice must also state that the purpose, or one (1) of the~~
11 ~~purposes, of the meeting is to consider the plan of merger or share exchange~~
12 ~~and contain or be accompanied by a copy or summary of the plan.~~

13 ~~(e) Unless this chapter, the articles of incorporation, or the board~~
14 ~~of directors (acting pursuant to subsection (c) of this section) require a~~
15 ~~greater vote or a vote by voting groups, the plan of merger or share exchange~~
16 ~~to be authorized must be approved by each voting group entitled to vote~~
17 ~~separately on the plan by a majority of all the votes entitled to be cast on~~
18 ~~the plan by that voting group.~~

19 ~~(f) Separate voting by voting groups is required:~~

20 ~~(1) on a plan of merger, if the plan contains a provision that,~~
21 ~~if contained in a proposed amendment to articles of incorporation, would~~
22 ~~require action by one (1) or more separate voting groups on the proposed~~
23 ~~amendment under § 4-27-1004;~~

24 ~~(2) on a plan of share exchange by each class or series of~~
25 ~~shares included in the exchange, with each class or series constituting a~~
26 ~~separate voting group.~~

27 ~~(g) Action by the shareholders of the surviving corporation on a plan~~
28 ~~of merger is not required if:~~

29 ~~(1) the articles of incorporation of the surviving corporation~~
30 ~~will not differ (except for amendments enumerated in § 4-27-1002) from its~~
31 ~~articles before the merger;~~

32 ~~(2) each shareholder of the surviving corporation whose shares~~
33 ~~were outstanding immediately before the effective date of the merger will~~
34 ~~hold the same number of shares, with identical designations, preferences,~~
35 ~~limitations, and relative rights, immediately after;~~

36 ~~(3) the number of voting shares outstanding immediately after~~

1 the merger, plus the number of voting shares issuable as a result of the
2 merger (either by the conversion of securities issued pursuant to the merger
3 or the exercise of rights and warrants issued pursuant to the merger), will
4 not exceed by more than twenty percent (20%) the total number of voting
5 shares of the surviving corporation outstanding immediately before the
6 merger; and

7 (4) ~~the number of participating shares outstanding immediately~~
8 ~~after the merger, plus the number of participating shares issuable as a~~
9 ~~result of the merger (either by the conversion of securities issued pursuant~~
10 ~~to the merger or the exercise of rights and warrants issued pursuant to the~~
11 ~~merger), will not exceed by more than twenty percent (20%) the total number~~
12 ~~of participating shares outstanding immediately before the merger.~~

13 (h) ~~As used in subsection (g) of this section:~~

14 (1) ~~“Participating shares” means shares that entitle their~~
15 ~~holders to participate without limitation in distributions.~~

16 (2) ~~“Voting shares” means shares that entitle their holders to~~
17 ~~vote unconditionally in elections of directors.~~

18 (i) ~~After a merger or share exchange is authorized,~~
19 ~~and at any time before articles of merger or share exchange are filed, the~~
20 ~~planned merger or share exchange may be abandoned (subject to any contractual~~
21 ~~rights), without further shareholder action, in accordance with the procedure~~
22 ~~set forth in the plan of merger or share exchange or, if none is set forth,~~
23 ~~in the manner determined by the board of directors.~~

24
25 4-27-1104. Merger of subsidiary.

26 (a) ~~A parent corporation owning at least ninety percent (90%) of the~~
27 ~~outstanding shares of each class of a subsidiary corporation may merge the~~
28 ~~subsidiary into itself without approval of the shareholders of the parent or~~
29 ~~subsidiary.~~

30 (b) ~~The board of directors of the parent shall adopt a plan of merger~~
31 ~~that sets forth:~~

32 (1) ~~the names of the parent and subsidiary; and~~

33 (2) ~~the manner and basis of converting the shares of the~~
34 ~~subsidiary into shares, obligations, or other securities of the parent or any~~
35 ~~other corporation or into cash or other property in whole or in part.~~

36 (c) ~~The parent shall mail a copy or summary of the plan of merger to~~

1 each shareholder of the subsidiary who does not waive the mailing requirement
2 in writing.

3 ~~(d) The parent may not deliver articles of merger to the Secretary of~~
4 ~~State for filing until at least thirty (30) days after the date it mailed a~~
5 ~~copy of the plan of merger to each shareholder of the subsidiary who did not~~
6 ~~wave the mailing requirement.~~

7 ~~(e) Articles of merger under this section may not contain amendments~~
8 ~~to the articles of incorporation of the parent corporation (except for~~
9 ~~amendments enumerated in § 4-27-1002).~~

10
11 ~~4-27-1105. Articles of merger or share exchange.~~

12 ~~(a) After a plan of merger or share exchange is approved by the~~
13 ~~shareholders, or adopted by the board of directors if shareholder approval is~~
14 ~~not required, the surviving or acquiring corporation shall deliver to the~~
15 ~~Secretary of State for filing articles of merger or share exchange setting~~
16 ~~forth:~~

17 ~~(1) the plan of merger or share exchange;~~

18 ~~(2) if shareholder approval was not required, a statement to~~
19 ~~that effect;~~

20 ~~(3) if approval of the shareholders of one (1) or more~~
21 ~~corporations party to the merger or share exchange was required:~~

22 ~~(i) the designation, number of outstanding shares,~~
23 ~~and number of votes entitled to be cast by each voting group entitled to vote~~
24 ~~separately on the plan as to each corporation; and~~

25 ~~(ii) either the total number of votes cast for and~~
26 ~~against the plan by each voting group entitled to vote separately on the plan~~
27 ~~or the total number of undisputed votes cast for the plan separately by each~~
28 ~~voting group and a statement that the number cast for the plan by each voting~~
29 ~~group was sufficient for approval by that voting group.~~

30 ~~(b) A merger or share exchange takes effect upon the effective date of~~
31 ~~the articles of merger or share exchange.~~

32
33 ~~4-27-1106. Effect of merger or share exchange.~~

34 ~~(a) When a merger takes effect:~~

35 ~~(1) every other corporation party to the merger merges into the~~
36 ~~surviving corporation and the separate existence of every corporation except~~

1 ~~the surviving corporation ceases;~~

2 ~~(2) the title to all real estate and other property owned by~~
3 ~~each corporation party to the merger is vested in the surviving corporation~~
4 ~~without reversion or impairment;~~

5 ~~(3) the surviving corporation has all liabilities of each~~
6 ~~corporation party to the merger;~~

7 ~~(4) a proceeding pending against any corporation party to the~~
8 ~~merger may be continued as if the merger did not occur or the surviving~~
9 ~~corporation may be substituted in the proceeding for the corporation whose~~
10 ~~existence ceased;~~

11 ~~(5) the articles of incorporation of the surviving corporation~~
12 ~~are amended to the extent provided in the plan of merger; and~~

13 ~~(6) the shares of each corporation party to the merger that are~~
14 ~~to be converted into shares, obligations, or other securities of the~~
15 ~~surviving or any other corporation or into cash or other property are~~
16 ~~converted, and the former holders of the shares are entitled only to the~~
17 ~~rights provided in the articles of merger or to their rights under § 4-27-~~
18 ~~1301 et seq.~~

19 ~~(b) When a share exchange takes effect, the shares of each acquired~~
20 ~~corporation are exchanged as provided in the plan, and the former holders of~~
21 ~~the shares are entitled only to the exchange rights provided in the articles~~
22 ~~of share exchange or to their rights under § 4-27-1301 et seq.~~

23
24 ~~4-27-1107. Merger or share exchange with foreign corporations.~~

25 ~~(a) One (1) or more foreign corporations may merge or enter into a~~
26 ~~share exchange with one (1) or more domestic corporations if:~~

27 ~~(1) in a merger, the merger is permitted by the law of the state~~
28 ~~or country under whose law each foreign corporation is incorporated and each~~
29 ~~foreign corporation complies with that law in effecting the merger;~~

30 ~~(2) in a share exchange, the corporation whose shares will be~~
31 ~~acquired is a domestic corporation, whether or not a share exchange is~~
32 ~~permitted by the law of the state or country under whose law the acquiring~~
33 ~~corporation is incorporated;~~

34 ~~(3) the foreign corporation complies with § 4-27-1105 if it is~~
35 ~~the surviving corporation of the merger or acquiring corporation of the share~~
36 ~~exchange; and~~

1 ~~(4) each domestic corporation complies with the applicable~~
2 ~~provisions of §§ 4-27-1101—4-27-1104 and, if it is the surviving~~
3 ~~corporation of the merger or acquiring corporation of a share exchange, with~~
4 ~~§ 4-27-1105.~~

5 ~~(b) Upon the merger or share exchange taking effect, the surviving~~
6 ~~foreign corporation of a merger and the acquiring foreign corporation of a~~
7 ~~share exchange is deemed:~~

8 ~~(1) to agree that service of process in a proceeding to enforce~~
9 ~~any obligation or the rights of dissenting shareholders of each domestic~~
10 ~~corporation party to the merger or share exchange may be made in the manner~~
11 ~~provided in § 4-20-113; and~~

12 ~~(2) to agree that it will promptly pay to the dissenting~~
13 ~~shareholders of each domestic corporation party to the merger or share~~
14 ~~exchange the amount, if any, to which they are entitled under § 4-27-1301 et~~
15 ~~seq.~~

16 ~~(c) This section does not limit the power of a foreign corporation to~~
17 ~~acquire all or part of the shares of one (1) or more classes or series of a~~
18 ~~domestic corporation through a voluntary exchange or otherwise.~~

19
20 4-27-1101. Definitions.

21 In this subchapter:

22 (1) “Constituent corporation” means a constituent organization
23 that is a corporation;

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

26 (3) “Converted organization” means the organization into which a
27 converting organization converts pursuant to §§ 4-27-1102 through 4-27-1105;

28 (4) “Converting corporation” means a converting organization
29 that is a corporation;

30 (5) “Converting organization” means an organization that
31 converts into another organization pursuant to § 4-27-1102;

32 (6) “Governing statute” of an organization means the statute
33 that governs the organization’s internal affairs; and

34 (7) “In a record” means maintained or kept on file by the
35 organization at an office of the organization or with the Secretary of State.

36 (8)(A) “Organization” means:

1 (i) A partnership, including a limited liability
2 partnership;

3 (ii) A limited partnership, including a limited
4 liability limited partnership;

5 (iii) A limited liability company;

6 (iv) A business trust;

7 (v) A corporation; or

8 (vi) Any other entity that has a governing statute.

9 (B) "Organization" includes a domestic or foreign
10 organization whether or not the organization is organized for profit;

11 (9) "Organizational documents" means:

12 (A) For a domestic or foreign general partnership, its
13 partnership agreement and, if applicable, statement of qualification;

14 (B) For a domestic or foreign limited partnership, its
15 certificate of limited partnership and partnership agreement;

16 (C) For a domestic or foreign limited liability company,
17 its articles of organization and operating agreement, or the comparable
18 records provided for in its governing statute;

19 (D) For a business trust, its agreement of trust and
20 declaration of trust;

21 (E) For a domestic or foreign corporation for profit, its
22 articles of incorporation, bylaws, and other agreements among its
23 shareholders which are authorized by its governing statute, or the comparable
24 records provided for in its governing statute; and

25 (F) For any other organization, the records that:

26 (i) Create the organization;

27 (ii) Determine the internal governance of the
28 organization; and

29 (iii) Determine the relations among the
30 organization's owners, members, and interested parties; and

31 (10) "Surviving organization" means an organization into which
32 one or more other organizations are merged.

33
34 4-27-1102. Conversion.

35 (a) An organization other than a corporation may convert to a
36 corporation, and a corporation may convert to another organization under this

1 section and §§ 4-27-1103 through 4-27-1105 and a plan of conversion, if the:

2 (1) Other organization's governing statute authorizes the
3 conversion and is complied with; and

4 (2) Conversion is not prohibited by the law of the jurisdiction
5 that enacted the governing statute.

6 (b) A plan of conversion must be in a record and must include the:

7 (1) Name and form of the organization before conversion;

8 (2) Name and form of the organization after conversion;

9 (3) Terms and conditions of the conversion, including the manner
10 and basis for converting interests in the converting organization into any
11 combination of money, interests in the converted organization, and other
12 consideration; and

13 (4) Organizational documents of the converted organization.

14
15 4-27-1103. Action on plan of conversion by converting corporation.

16 (a) A plan of conversion may be approved if the:

17 (1) Board of directors recommends the plan of conversion to the
18 shareholders, unless the board of directors:

19 (A) Determines that because of a conflict of interest or
20 other special circumstances it should make no recommendation; and

21 (B) Communicates the basis for its determination at the
22 time the plan of conversion is submitted to the shareholders; and

23 (2) Shareholders entitled to vote approve the plan.

24 (b) The board of directors may condition its submission of the
25 proposed conversion on any basis.

26 (c)(1) The corporation shall notify each shareholder, whether or not
27 entitled to vote, of the proposed shareholders' meeting in accordance with §
28 4-27-705.

29 (2) The notice shall:

30 (A) State that a purpose of the meeting is to consider the
31 plan of conversion; and

32 (B) Contain or be accompanied by a copy or summary of the
33 plan.

34 (d) Unless this chapter, the articles of incorporation, or the board
35 of directors acting under subsection (b) of this section require a greater
36 vote or a vote by voting groups, the plan of conversion to be authorized must

1 be approved by each voting group entitled to vote separately on the plan by a
2 majority of all the votes entitled to be cast on the plan by the voting
3 group.

4 (e) Subject to any contractual rights, until a conversion is filed
5 under § 4-27-1104, a converting corporation may amend the plan or abandon the
6 planned conversion:

7 (1) As provided in the plan; and

8 (2) Except as prohibited by the plan, by the same consent
9 required to approve the plan.

10
11 4-27-1104. Filings required for conversion – Effective date.

12 (a)(1) After a plan of conversion is approved a converting corporation
13 shall file articles of conversion with the Secretary of State.

14 (2) The articles of conversion shall include:

15 (A) A statement that the corporation has been converted
16 into another organization;

17 (B) The name and form of the organization and the
18 jurisdiction of its governing statute;

19 (C) The date the conversion is effective under the
20 governing statute of the converted organization;

21 (D) A statement that the conversion was approved as
22 required by this chapter;

23 (E) A statement that the conversion was approved as
24 required by the governing statute of the converted organization;

25 (F) A statement confirming that the converted organization
26 has filed a statement appointing an agent for service of process under § 4-
27 20-112 if the converted organization is a foreign organization not authorized
28 to transact business in this state; and

29 (G)(i) A copy of the plan of conversion; or

30 (ii) A statement that:

31 (a) Contains the address of an office of the
32 organization where the plan of conversion is on file; and

33 (b) A copy of the plan of conversion will be
34 furnished by the converting corporation on request and without cost to any
35 shareholder of the converting corporation.

36 (b)(1) If the converting organization is not a converting

1 corporation, the converting organization shall file articles of incorporation
2 with the Secretary of State.

3 (2) The articles of incorporation shall include, in addition to
4 the information required by § 4-27-202:

5 (A) A statement that the corporation was converted from
6 another organization;

7 (B) The name and form of the organization and the
8 jurisdiction of its governing statute; and

9 (C) A statement that the conversion was approved in a
10 manner that complied with the organization's governing statute.

11 (c) A conversion becomes effective:

12 (1) If the converted organization is a corporation, when the
13 articles of incorporation take effect; and

14 (2) If the converted organization is not a corporation, as
15 provided by the governing statute of the converted organization.

16
17 4-27-1105. Effect of conversion.

18 (a) An organization that has been converted under this subchapter is
19 for all purposes the same entity that existed before the conversion.

20 (b) When a conversion takes effect:

21 (1) All property owned by the converting organization remains
22 vested in the converted organization;

23 (2) All debts, liabilities, and other obligations of the
24 converting organization continue as obligations of the converted
25 organization;

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

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

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

33 (6) Except as otherwise agreed, the conversion does not dissolve
34 a converting corporation under § 4-27-1401 et seq.

35 (c)(1) A converted organization that is a foreign organization
36 consents to the jurisdiction of the courts of this state to enforce any

1 obligation owed by the converting corporation, if before the conversion the
2 converting corporation was subject to suit in this state on the obligation.

3 (2) A converted organization that is a foreign organization and
4 not authorized to transact business in this state may be served with process
5 under § 4-20-113 if the converted organization:

6 (A) Fails to appoint an agent for service of process under
7 § 4-20-112;

8 (B) No longer has an agent for service of process; or

9 (C) Has an agent for service of process that cannot with
10 reasonable diligence be served.

11
12 4-27-1106. Merger.

13 (a) A corporation may merge with one (1) or more other constituent
14 organizations under this section and §§ 4-27-1107 through 4-27-1110 and a
15 plan of merger if:

16 (1) The governing statute of each of the other organizations
17 authorizes the merger;

18 (2) The merger is not prohibited by the law of a jurisdiction
19 that enacted any of the governing statutes; and

20 (3) Each of the other organizations complies with its governing
21 statute in effecting the merger.

22 (b) A plan of merger shall be in a record and shall include:

23 (1) The name and form of each constituent organization;

24 (2) The name and form of the surviving organization;

25 (3) The terms and conditions of the merger, including the manner
26 and basis for converting the interests in each constituent organization into
27 any combination of money, interests in the surviving organization, and other
28 consideration; and

29 (4) Any amendments to be made by the merger to the surviving
30 organization's organizational documents.

31
32 4-27-1107. Action on plan of merger by constituent corporation.

33 (a) Except as provided in subsection (g) of this section and after
34 adopting a plan of merger, the board of directors of each corporation that is
35 a party to the merger shall submit the plan of merger for approval by its
36 shareholders.

1 (b) A plan of merger may be approved if the:

2 (1) Board of directors recommends the plan of merger to the
3 shareholders, unless the board of directors:

4 (A) Determines that because of a conflict of interest or
5 other special circumstances it should make no recommendation; and

6 (B) Communicates the basis for its determination at the
7 time the plan of merger is submitted to the shareholders; and

8 (2) The shareholders entitled to vote approve the plan.

9 (c) The board of directors may condition its submission of the
10 proposed merger on any basis.

11 (d)(1) The corporation shall notify each shareholder, whether or not
12 entitled to vote, of the proposed shareholders' meeting in accordance with §
13 4-27-705.

14 (2) The notice shall:

15 (A) State that a purpose of the meeting is to consider the
16 plan of merger; and

17 (B) Contain or be accompanied by a copy or summary of the
18 plan.

19 (e) Unless this chapter, the articles of incorporation, or the board
20 of directors acting under to subsection (c) of this section require a greater
21 vote or a vote by voting groups, the plan of merger to be authorized must be
22 approved by the affirmative vote of the holders of a majority of the
23 outstanding shares entitled to vote, and if by voting group, by each voting
24 group entitled to vote separately on the plan by a majority of all the votes
25 entitled to be cast on the plan by the voting group.

26 (f) Separate voting by voting groups is required on a plan of merger
27 if the plan contains a provision that, if contained in a proposed amendment
28 to the articles of incorporation, would require action by one (1) or more
29 separate voting groups on the proposed amendment under § 4-27-1004.

30 (g) Action by the shareholders of the surviving corporation on a plan
31 of merger is not required if:

32 (1) The articles of incorporation of the surviving corporation
33 will not differ except for amendments enumerated in § 4-27-1002 from its
34 articles before the merger;

35 (2) Each shareholder of the surviving corporation whose shares
36 were outstanding immediately before the effective date of the merger will

1 hold the same number of shares or the interest comparable to shares in an
2 entity other than a corporation, with identical designations, preferences,
3 limitations, and relative rights immediately after the merger;

4 (3) The number of voting shares outstanding immediately after
5 the merger plus the number of voting shares issuable as a result of the
6 merger either by the conversion of securities issued pursuant to the merger
7 or the exercise of rights and warrants issued pursuant to the merger, will
8 not exceed by more than twenty percent (20%) the total number of voting
9 shares of the surviving corporation outstanding immediately before the
10 merger; and

11 (4) The number of participating shares outstanding immediately
12 after the merger plus the number of participating shares issuable as a result
13 of the merger either by the conversion of securities issued pursuant to the
14 merger or the exercise of rights and warrants issued pursuant to the merger,
15 will not exceed by more than twenty percent (20%) the total number of
16 participating shares outstanding immediately before the merger.

17 (h) As used in subsection (g) of this section:

18 (1) "Participating shares" means shares that entitle their
19 holders to participate without limitation in distributions; and

20 (2) "Voting shares" means shares that entitle their holders to
21 vote unconditionally in elections of directors.

22 (i) Subject to any contractual rights, at any time before articles of
23 merger are filed the planned merger may be abandoned without further
24 shareholder action in accordance with the procedure set forth in the plan of
25 merger or, if none is set forth, in the manner determined by the board of
26 directors.

27
28 4-27-1108. Merger of subsidiary.

29 (a) A parent corporation owning at least ninety percent (90%) of the
30 outstanding shares of each class of a subsidiary corporation may merge the
31 subsidiary corporation into itself without approval of the shareholders of
32 the parent corporation or subsidiary corporation.

33 (b) The board of directors of the parent corporation shall adopt a
34 plan of merger that sets forth:

35 (1) The names of the parent corporation and the subsidiary
36 corporation; and

1 (2) The manner and basis of converting the shares of the
2 subsidiary corporation into:

3 (A) Shares, obligations, or other securities of the parent
4 corporation or any other corporation; or

5 (B) Cash or other property.

6 (c) The parent corporation shall mail a copy or summary of the plan of
7 merger to each shareholder of the subsidiary who does not waive the mailing
8 requirement in writing.

9 (d) The parent corporation may not deliver articles of merger to the
10 Secretary of State for filing until at least thirty (30) days after the date
11 the parent corporation mailed a copy of the plan of merger to each
12 shareholder of the subsidiary corporation who did not waive the mailing
13 requirement.

14 (e) Articles of merger under this section may not contain amendments
15 to the articles of incorporation of the parent corporation except for
16 amendments enumerated in § 4-27-1002.

17
18 4-27-1109. Filings required for merger – Effective date.

19 (a) After each constituent organization has approved a merger,
20 articles of merger must be signed by an authorized representative of each
21 constituent organization.

22 (b) The articles of merger shall include:

23 (1) The name and form of each constituent organization and the
24 jurisdiction of its governing statute;

25 (2) The name and form of the surviving organization and the
26 jurisdiction of its governing statute;

27 (3) The date the merger is effective under the governing statute
28 of the surviving organization;

29 (4) Any amendments provided for in the plan of merger for the
30 organizational document of the surviving organization;

31 (5) A statement as to each constituent organization that the
32 merger was approved as required by the organization's governing statute;

33 (6) A statement confirming that the surviving organization has
34 filed a statement appointing an agent for service of process under § 4-20-112
35 if the surviving organization is a foreign organization not authorized to
36 transact business in this state; and

1 (7)(A) A copy of the plan of merger; or

2 (B) A statement that:

3 (i) Contains the address of an office of the
4 surviving organization where the plan of merger is on file; and

5 (ii) A copy of the plan of merger will be furnished
6 by the surviving organization on request and without cost to any shareholder,
7 member, partner, or other owner of any constituent organization; and

8 (8) Any additional information required by the governing statute
9 of any constituent organization.

10 (c) Each constituent organization shall deliver the articles of merger
11 for filing in the office of the Secretary of State.

12 (d) A merger becomes effective under this subchapter:

13 (1) If the surviving organization is a corporation, upon the
14 later of:

15 (A) Compliance with subsection (c) of this section; or

16 (B) The date specified in the articles of merger; or

17 (2) If the surviving organization is not a corporation, as
18 provided by the governing statute of the surviving organization.

19
20 4-27-1110. Effect of merger.

21 (a) When a merger becomes effective:

22 (1) The surviving organization continues or comes into
23 existence;

24 (2) Each constituent organization that merges into the surviving
25 organization ceases to exist as a separate entity;

26 (3) All property owned by each constituent organization that
27 ceases to exist vests in the surviving organization;

28 (4) All debts, liabilities, and other obligations of each
29 constituent organization that ceases to exist continue as obligations of the
30 surviving organization;

31 (5) An action or proceeding pending by or against a constituent
32 organization that ceases to exist may continue as if the merger had not
33 occurred;

34 (6) Except as prohibited by other law, all of the rights,
35 privileges, immunities, powers, and purposes of each constituent organization
36 that ceases to exist vest in the surviving organization;

1 (7) Except as otherwise provided in the plan of merger, the
 2 terms and conditions of the plan of merger take effect;

3 (8) Except as otherwise agreed, if a constituent corporation
 4 ceases to exist, the merger does not dissolve the corporation for the
 5 purposes of § 4-27-1401 et seq.; and

6 (9) Any amendments provided for in the articles of merger for
 7 the organizational documents of the surviving organization become effective.

8 (b)(1) A surviving organization that is a foreign organization
 9 consents to the jurisdiction of the courts of this state to enforce any
 10 obligation owed by a constituent organization if before the merger the
 11 constituent organization was subject to suit in this state on the obligation.

12 (2) A surviving organization that is a foreign organization and
 13 not authorized to transact business in this state may be served with process
 14 under § 4-20-113 if the surviving organization:

15 (A) Fails to appoint an agent for service of process under
 16 § 4-20-112;

17 (B) No longer has an agent for service of process; or

18 (C) Has an agent for service of process that cannot with
 19 reasonable diligence be served.

20
 21 4-27-1111. Chapter not exclusive.

22 This chapter does not preclude an organization from being converted or
 23 merged under other law.

24
 25 SECTION 3. Arkansas Code § 4-27-1302 is amended to read as follows:

26 4-27-1302. Right of dissent.

27 (a) A shareholder is entitled to dissent from and obtain payment of
 28 the fair value of ~~his~~ the shareholder's shares in the event of any of the
 29 following corporate actions:

30 (1) Consummation of a plan of conversion to which the
 31 corporation is a party;

32 ~~(1)~~ (2) consummation Consummation of a plan of merger to which
 33 the corporation is a party ~~(i)~~ if:

34 (A) shareholder Shareholder approval is required for the
 35 merger by ~~§ 4-27-1103~~ § 4-27-1107 or the articles of incorporation and the
 36 shareholder is entitled to vote on the merger; or

1 ~~(ii)~~ (B) ~~if~~ If the corporation is a subsidiary that is
2 merged with its parent under ~~§ 4-27-1104~~ § 4-27-1108;

3 ~~(2)~~ (3) ~~consummation~~ Consummation of a plan of share exchange to
4 which the corporation is a party as the corporation whose shares will be
5 acquired, if the shareholder is entitled to vote on the plan;

6 ~~(3)~~ (4) ~~consummation~~ Consummation of a sale or exchange of all,
7 or substantially all, of the property of the corporation other than in the
8 usual and regular course of business, if the shareholder is entitled to vote
9 on the sale or exchange, including a sale in dissolution, but not including a
10 sale ~~pursuant to~~ under court order or a sale for cash ~~pursuant to~~ under a
11 plan by which all or substantially all of the net proceeds of the sale will
12 be distributed to the shareholders within one (1) year after the date of
13 sale;

14 ~~(4)~~ (5) ~~an~~ An amendment to the articles of incorporation that
15 materially and adversely affects rights in respect of a dissenter's shares
16 because it:

17 (i) ~~alters~~ Alters or abolishes a preferential right
18 of the shares;

19 (ii) ~~creates~~ Creates, alters, or abolishes a right
20 in respect of redemption, including a provision respecting a sinking fund for
21 the redemption or repurchase, of the shares;

22 (iii) ~~alters~~ Alters or abolishes a preemptive right
23 of the holder of the shares to acquire shares or other securities;

24 (iv) ~~excludes~~ Excludes or limits the right of the
25 shares to vote on any matter, or to cumulate votes, other than a limitation
26 by dilution through issuance of shares or other securities with similar
27 voting rights; or

28 (v) ~~reduces~~ Reduces the number of shares owned by
29 the shareholder to a fraction of a share if the fractional share so created
30 is to be acquired for cash under § 4-27-604; or

31 ~~(5)~~ (6) ~~any~~ Any corporate action taken pursuant to a shareholder
32 vote to the extent the articles of incorporation, bylaws, or a resolution of
33 the board of directors provide that voting or nonvoting shareholders are
34 entitled to dissent and obtain payment for their shares.

35 (b) A shareholder entitled to dissent and obtain payment for ~~his~~ the
36 shareholder's shares under this subchapter may not challenge the corporate

1 action creating ~~his~~ the shareholder's entitlement unless the action is
2 unlawful or fraudulent with respect to the shareholder or the corporation.

3
4 SECTION 4. Arkansas Code Title 4, Chapter 27 is amended by adding an
5 additional subchapter to read as follows:

6
7 SUBCHAPTER 18 – Share Exchange.

8 4-27-1801. Share exchange.

9 (a) A corporation may acquire all of the outstanding shares of one (1)
10 or more classes or series of another corporation if the board of directors
11 and shareholders if required by § 4-27-1802 of each corporation approve the
12 exchange.

13 (b) The plan of exchange shall set forth:

14 (1) The name of the corporation whose shares will be acquired
15 and the name of the acquiring corporation;

16 (2) The terms and conditions of the exchange;

17 (3) The manner and basis of exchanging the shares to be acquired
18 for:

19 (A) Shares, obligations, or other securities of the
20 acquiring corporation or any other corporation; or

21 (C) Cash or other property.

22 (c) The plan of exchange may set forth other provisions relating to
23 the exchange.

24 (d) This section does not limit the power of a corporation to acquire
25 all or part of the shares of one (1) or more classes or series of another
26 corporation through a voluntary exchange or otherwise.

27
28 4-27-1802. Action on plan of share exchange.

29 (a) After adopting a plan of share exchange, the board of directors of
30 each corporation whose shares will be acquired in the share exchange shall
31 submit the plan of share exchange for approval by its shareholders.

32 (b) A plan of share exchange may be approved if the:

33 (1) Board of directors recommends the plan of share exchange to
34 the shareholders, unless the board of directors:

35 (A) Determines that because of a conflict of interest or
36 other special circumstances it should make no recommendation; and

1 (B) Communicates the basis for its determination at the
2 time the plan of share exchange is submitted to the shareholders; and

3 (2) Shareholders entitled to vote approve the plan.

4 (c) The board of directors may condition its submission of the
5 proposed plan of share exchange on any basis.

6 (d)(1) The corporation shall notify each shareholder, whether or not
7 entitled to vote, of the proposed shareholders' meeting in accordance with §
8 4-27-705.

9 (2) The notice shall:

10 (A) State that a purpose of the meeting is to consider the
11 plan of share exchange; and

12 (B) Contain or be accompanied by a copy or summary of the
13 plan.

14 (e) Unless this chapter, the articles of incorporation, or the board
15 of directors acting under subsection (c) of this section require a greater
16 vote or a vote by voting groups, the plan of share exchange to be authorized
17 must be approved by the affirmative vote of the holders of a majority of the
18 outstanding shares entitled to vote and, if by voting group, by each voting
19 group entitled to vote separately on the plan by a majority of all the votes
20 entitled to be cast on the plan by the voting group.

21 (f)(1) Separate voting by voting groups is required on a plan of share
22 exchange by each class or series of shares included in the exchange.

23 (2) Each class or series constitutes a separate voting group.

24 (g) Subject to any contractual rights, until articles of share
25 exchange are filed the planned share exchange may be abandoned without
26 further shareholder action in accordance with the procedure set forth in the
27 plan of share exchange or, if none is set forth, in the manner determined by
28 the board of directors.

29
30 4-27-1803. Articles of share exchange.

31 (a) After a plan of share exchange is approved by the shareholders or
32 adopted by the board of directors if shareholder approval is not required,
33 the surviving or acquiring corporation shall file articles of share exchange
34 with the Secretary of State.

35 (b) The articles of share exchange shall include:

36 (1)(A) A copy of the plan of share exchange; or

1 (B) A statement that:

2 (i) Contains the address of an office of the
3 surviving corporation where the plan of share exchange is on file; and

4 (ii) A copy of the plan of share exchange will be
5 furnished by the surviving corporation on request and without cost to any
6 shareholder, member, partner, or other owner of any constituent organization;

7 (2) If shareholder approval was not required, a statement that
8 shareholder approval was required;

9 (3) If the approval of the shareholders of one (1) or more
10 corporations to the share exchange was required;

11 (A) The designation, number of outstanding shares, and
12 number of votes entitled to be cast by each voting group entitled to vote
13 separately on the plan as to each corporation; and

14 (B)(i) The total number of votes cast for and against the
15 plan by each voting group entitled to vote separately on the plan; or

16 (ii) The total number of undisputed votes cast for
17 the plan separately by each voting group; and

18 (4) A statement that the number of votes cast for the plan by
19 each voting group was sufficient for approval by that voting group.

20 (c) A share exchange takes effect upon the effective date of the
21 articles of share exchange.

22
23 4-27-1804. Effect of share exchange.

24 When a share exchange takes effect, the shares of each acquired
25 corporation are exchanged as provided in the plan and the former holders of
26 the shares are entitled only to:

27 (1) The exchange rights provided in the articles of share
28 exchange; or

29 (2) The rights of the former holders of the shares under § 4-27-
30 1301 et seq.

31
32 SECTION 5. Arkansas Code Title 4, Chapter 32, Subchapter 12 is
33 amended to read as follows:

34 ~~4-32-1201. Merger or consolidation.~~

35 ~~(a) Unless otherwise provided in writing in an operating agreement,~~
36 ~~and subject to any law applicable to business entities other than limited~~

1 ~~liability companies, one (1) or more limited liability companies may merge or~~
2 ~~consolidate with or into one (1) or more other business entities with the~~
3 ~~limited liability company or other business entity as the merger or~~
4 ~~consolidation agreement shall provide being the surviving or resulting~~
5 ~~limited liability company or other business entity.~~

6 ~~(b) Rights or securities of or interests in a business entity that is~~
7 ~~a party to the merger or consolidation may be exchanged for or converted into~~
8 ~~cash, property, obligations, or rights or securities of or interests in the~~
9 ~~surviving or resulting business entity or of any other business entity.~~

10 ~~(c) As used in this subchapter, "business entity" or "business~~
11 ~~entities" shall mean domestic and foreign limited liability companies,~~
12 ~~corporations, general partnerships, limited partnerships, registered limited~~
13 ~~liability partnerships and registered limited liability limited partnerships.~~

14
15 ~~4-32-1202. Approval of merger or consolidation.~~

16 ~~(a) Unless otherwise provided in writing in an operating agreement, a~~
17 ~~limited liability company that is a party to a proposed merger or~~
18 ~~consolidation shall approve the merger or consolidation agreement by the~~
19 ~~consent of more than one half ($\frac{1}{2}$) by number of the members.~~

20 ~~(b) Each business entity that is a party to a proposed merger or~~
21 ~~consolidation shall approve the merger or consolidation in the manner and by~~
22 ~~the vote required by the laws applicable to the business entity.~~

23 ~~(c) Each business entity that is a party to the merger or~~
24 ~~consolidation shall have the rights to abandon the merger as are provided for~~
25 ~~in the merger or consolidation agreement or in the laws applicable to the~~
26 ~~business entity.~~

27
28 ~~4-32-1203. Articles of merger or consolidation.~~

29 ~~(a) The business entity surviving or resulting from the merger or~~
30 ~~consolidation shall deliver to the Secretary of State articles of merger or~~
31 ~~consolidation executed by each constituent entity setting forth:~~

32 ~~(1) The name and jurisdiction of formation or organization of~~
33 ~~each business entity which is to merge or consolidate;~~

34 ~~(2) That an agreement of merger or consolidation has been~~
35 ~~approved and executed by each business entity which is a party to the merger~~
36 ~~or consolidation;~~

1 ~~(3) The name of the surviving or resulting business entity;~~

2 ~~(4) The future effective date of the merger or consolidation,~~

3 ~~which shall be a date or time certain, if it is not to be effective upon the~~
4 ~~filing of the articles of merger or consolidation;~~

5 ~~(5) That the agreement of merger or consolidation is on file at~~
6 ~~a place of business of the surviving or resulting business entity, and the~~
7 ~~address of that place of business;~~

8 ~~(6) That a copy of the agreement of merger or consolidation will~~
9 ~~be furnished by the surviving or resulting business entity on request and~~
10 ~~without cost to any person holding an interest in any business entity which~~
11 ~~is to merge or consolidate; and~~

12 ~~(7) If the surviving or resulting entity is not a business~~
13 ~~entity organized under the laws of this state, a statement that such~~
14 ~~surviving or resulting business entity;~~

15 ~~(A) Agrees that it may be served with process in this~~
16 ~~state in any proceeding for enforcement of any obligation of any business~~
17 ~~entity party to the merger or consolidation that was organized under the laws~~
18 ~~of this state, as well as for enforcement of any obligation of the surviving~~
19 ~~business entity or the new business entity arising from the merger or~~
20 ~~consolidation; and~~

21 ~~(B) Appoints the Secretary of State as its agent for~~
22 ~~service of process in any such proceeding, and the surviving business entity~~
23 ~~or the new business entity shall specify the address to which a copy of the~~
24 ~~process shall be mailed to it by the Secretary of State.~~

25 ~~(b) A merger or consolidation takes effect upon the later of the~~
26 ~~effective date of the filing of the articles of merger or consolidation or~~
27 ~~the date set forth in the articles of merger or consolidation.~~

28 ~~(c) The articles of merger or consolidation shall be executed by a~~
29 ~~limited liability company that is a party to the merger or consolidation in~~
30 ~~the manner provided for in § 4-32-204 and shall be filed with the Secretary~~
31 ~~of State in the manner provided for in § 4-32-205.~~

32 ~~(d) Articles of merger or consolidation shall constitute articles of~~
33 ~~dissolution for a limited liability company which is not the surviving or~~
34 ~~resulting business entity in the merger or consolidation.~~

35 ~~(e) An agreement of merger or consolidation approved in accordance~~
36 ~~with § 4-32-1202 may effect any amendment to an operating agreement or effect~~

1 ~~the adoption of a new operating agreement for a limited liability company if~~
2 ~~it is the surviving or resulting limited liability company in the merger or~~
3 ~~consolidation. An approved agreement of merger or consolidation may also~~
4 ~~provide that the operating agreement of any constituent limited liability~~
5 ~~company to the merger or consolidation, including a limited liability company~~
6 ~~formed for the purpose of consummating a merger or consolidation, shall be~~
7 ~~the operating agreement of the surviving or resulting limited liability~~
8 ~~company. Any amendment to an operating agreement or adoption of a new~~
9 ~~operating agreement made pursuant to this subsection shall be effective at~~
10 ~~the effective time or date of the merger or consolidation. The provisions of~~
11 ~~this subsection shall not be construed to limit the accomplishment of a~~
12 ~~merger or of any of the matters referred to herein by any other means~~
13 ~~provided for in an operating agreement or other agreement or as otherwise~~
14 ~~permitted by law.~~

15
16 ~~4-32-1204. Effects of merger or consolidation.~~

17 ~~A merger or consolidation has the following effects:~~

18 ~~(1) The business entities that are parties to the merger or~~
19 ~~consolidation agreement shall be a single entity, which, in the case of a~~
20 ~~merger shall be the entity designated in the plan of merger as the surviving~~
21 ~~entity, and, in the case of a consolidation, shall be the new entity provided~~
22 ~~for in the plan of consolidation;~~

23 ~~(2) Each party to the merger or consolidation agreement except~~
24 ~~the surviving entity or the new entity shall cease to exist;~~

25 ~~(3) The surviving entity or the new entity shall thereupon and~~
26 ~~thereafter possess all the rights, privileges, immunities, and powers of each~~
27 ~~constituent entity and shall be subject to all the restrictions,~~
28 ~~disabilities, and duties of each of such constituent entities to the extent~~
29 ~~the rights, privileges, immunities, powers, franchises, restrictions,~~
30 ~~disabilities, and duties are applicable to the type of business entity that~~
31 ~~is the surviving entity or the new entity;~~

32 ~~(4) All property, real, personal and mixed, and all debts due on~~
33 ~~whatever account, including promises to make capital contributions and~~
34 ~~subscriptions for shares, and all other choses in action, and all and every~~
35 ~~other interest of or belonging to or due to each of the constituent entities~~
36 ~~shall be vested in the surviving entity or the new entity without further act~~

1 ~~or deed;~~

2 ~~(5) The title to all real estate and any interest therein vested~~
3 ~~in any such constituent entity shall not revert or be in any way impaired by~~
4 ~~reason of such merger or consolidation;~~

5 ~~(6) The surviving entity or the new entity shall thenceforth be~~
6 ~~liable for all liabilities and obligations of each of the constituent~~
7 ~~entities so merged or consolidated, and any claim existing or action or~~
8 ~~proceeding pending by or against any such constituent entity may be~~
9 ~~prosecuted as if such merger or consolidation had not taken place, or the~~
10 ~~surviving entity or the new entity may be substituted in the action;~~

11 ~~(7) Neither the rights of creditors nor any liens on the~~
12 ~~property of any constituent entity shall be impaired by the merger or~~
13 ~~consolidation; and~~

14 ~~(8) The interests in a limited liability company or shares or~~
15 ~~other interests in a corporation that are to be converted or exchanged into~~
16 ~~interests, shares or other securities, cash, obligations or other property~~
17 ~~under the terms of the merger or consolidation agreement are so converted,~~
18 ~~and the former holders thereof are entitled only to the rights provided in~~
19 ~~the merger or consolidation agreement or the rights otherwise provided by~~
20 ~~law.~~

21
22 SUBCHAPTER 12 – Conversion and Merger.

23 4-32-1201. Definitions.

24 In this subchapter:

25 (1) “Constituent limited liability company” means a constituent
26 organization that is a limited liability company;

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

29 (3) “Converted organization” means the organization into which a
30 converting organization converts under §§ 4-32-1202 through 4-32-1205;

31 (4) “Converting limited liability company” means a converting
32 organization that is a limited liability company;

33 (5) “Converting organization” means an organization that
34 converts into another organization under § 4-32-1202;

35 (6) “Governing statute” of an organization means the statute
36 that governs the organization’s internal affairs;

1 (7) “In a record” means maintained or kept on file by the
2 organization at an office of the organization or with the Secretary of State;

3 (8)(A) “Organization” means:

4 (i) A partnership, including a limited liability
5 partnership;

6 (ii) A limited partnership, including a limited
7 liability limited partnership;

8 (iii) A limited liability company;

9 (iv) A business trust;

10 (v) A corporation; or

11 (vi) Any other entity that has a governing statute.

12 (B) “Organization” includes a domestic or foreign
13 organization whether or not the organization is organized for profit;

14 (9) “Organizational documents” means:

15 (A) For a domestic or foreign general partnership, its
16 partnership agreement and if applicable statement of qualification;

17 (B) For a domestic or foreign limited partnership, its
18 certificate of limited partnership and partnership agreement;

19 (C) For a domestic or foreign limited liability company,
20 its articles of organization and operating agreement or the comparable
21 records provided for in its governing statute;

22 (D) For a business trust, its agreement of trust and
23 declaration of trust;

24 (E) For a domestic or foreign corporation for profit, its
25 articles of incorporation, bylaws, and other agreements among its
26 shareholders which are authorized by its governing statute or the comparable
27 records provided for in its governing statute; and

28 (F) For any other organization, the records that:

29 (i) Create the organization;

30 (ii) Determine the internal governance of the
31 organization; and

32 (iii) Determine the relations among the
33 organization’s owners, members, and interested parties; and

34 (10) “Surviving organization” means an organization into which
35 one or more other organizations are merged.

36

1 4-32-1202. Conversion.

2 (a) An organization other than a limited liability company may convert
3 to a limited liability company, and a limited liability company may convert
4 to another organization under this section and §§ 4-32-1203 through 4-32-1205
5 and a plan of conversion, if the:

6 (1) Other organization's governing statute authorizes the
7 conversion and is complied with; and

8 (2) Conversion is not prohibited by the law of the jurisdiction
9 that enacted the governing statute.

10 (b) A plan of conversion must be in a record and must include the:

11 (1) Name and form of the organization before conversion;

12 (2) Name and form of the organization after conversion; and

13 (3) Terms and conditions of the conversion, including the manner
14 and basis for converting interests in the converting organization into any
15 combination of money, interests in the converted organization, and other
16 consideration; and

17 (4) Organizational documents of the converted organization.

18
19 4-32-1203. Action on plan of conversion by converting limited
20 liability company.

21 (a) Unless otherwise provided in writing in an operating agreement, a
22 plan of conversion must be consented to by more than one-half (1/2) by number
23 of the members of a converting limited liability company.

24 (b) Subject to any contractual rights, until a conversion is filed
25 under § 4-32-1204, a converting limited liability company may amend the plan
26 or abandon the planned conversion:

27 (1) As provided in the plan; and

28 (2) Except as prohibited by the plan, by the same consent
29 required to approve the plan.

30
31 4-32-1204. Filings required for conversion – Effective date.

32 (a)(1) After a plan of conversion is approved, a converting limited
33 liability company shall file articles of conversion with the Secretary of
34 State.

35 (2) The articles of conversion shall include:

36 (A) A statement that the limited liability company has

1 been converted into another organization;

2 (B) The name and form of the converted organization and
3 the jurisdiction of its governing statute;

4 (C) The date the conversion is effective under the
5 governing statute of the converted organization;

6 (D) A statement that the conversion was approved as
7 required by this chapter;

8 (E) A statement that the conversion was approved as
9 required by the governing statute of the converted organization;

10 (F) A statement confirming that the converted organization
11 has filed a statement appointing an agent for service of process under § 4-
12 20-112 if the converted organization is a foreign organization not authorized
13 to transact business in this state; and

14 (G)(i) A copy of the plan of conversion; or

15 (ii) A statement that:

16 (a) Contains the address of an office of the
17 organization where the plan of conversion is on file; and

18 (b) A copy of the plan of conversion will be
19 furnished by the converting organization on request and without cost to any
20 shareholder of the converting organization.

21 (b)(1) If the converting organization is not a converting limited
22 liability company, the converting organization shall file articles of
23 organization with the Secretary of State.

24 (2) The articles of organization shall include, in addition to
25 the information required by § 4-32-202:

26 (A) A statement that the limited liability company was
27 converted from another organization;

28 (B) The name and form of the converting organization and
29 the jurisdiction of its governing statute; and

30 (C) A statement that the conversion was approved in a
31 manner that complied with the converting organization's governing statute.

32 (c) A conversion becomes effective:

33 (1) If the converted organization is a limited liability
34 company, when the articles of organization take effect; and

35 (2) If the converted organization is not a limited liability
36 company, as provided by the governing statute of the converted organization.

1
2 4-32-1205. Effect of conversion.

3 (a) An organization that has been converted under this subchapter is
4 for all purposes the same entity that existed before the conversion.

5 (b) When a conversion takes effect:

6 (1) All property owned by the converting organization remains
7 vested in the converted organization;

8 (2) All debts, liabilities, and other obligations of the
9 converting organization continue as obligations of the converted
10 organization;

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

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

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

18 (6) Except as otherwise agreed, the conversion does not dissolve
19 a converting limited liability company under § 4-32-901 et seq.

20 (c)(1) A converted organization that is a foreign organization
21 consents to the jurisdiction of the courts of this state to enforce any
22 obligation owed by the converting limited liability company, if before the
23 conversion the converting limited liability company was subject to suit in
24 this state on the obligation.

25 (2) A converted organization that is a foreign organization and
26 not authorized to transact business in this state may be served with process
27 under § 4-20-113 if the converted organization:

28 (A) Fails to appoint an agent for service of process under
29 § 4-20-112;

30 (B) No longer has an agent for service of process; or

31 (C) Has an agent for service of process that cannot with
32 reasonable diligence be served.

33
34 4-32-1206. Merger.

35 (a) A limited liability company may merge with one (1) or more other
36 constituent organizations under this section and §§ 4-32-1207 through 4-32-

1 1209 and a plan of merger, if:

2 (1) The governing statute of each of the other organizations
3 authorizes the merger;

4 (2) The merger is not prohibited by the law of a jurisdiction
5 that enacted any of the governing statutes; and

6 (3) Each of the other organizations complies with its governing
7 statute in effecting the merger.

8 (b) A plan of merger shall be in a record and shall include:

9 (1) The name and form of each constituent organization;

10 (2) The name and form of the surviving organization;

11 (3) The terms and conditions of the merger, including the manner
12 and basis for converting the interests in each constituent organization into
13 any combination of money, interests in the surviving organization, and other
14 consideration; and

15 (4) Any amendments to be made by the merger to the surviving
16 organization's organizational documents.

17
18 4-32-1207. Action on plan of merger by constituent limited liability
19 company.

20 (a) Unless otherwise provided in writing in an operating agreement, a
21 plan of merger must be consented to by more than one-half (1/2) by number of
22 the members of a constituent limited liability company.

23 (b) Subject to any contractual rights, until articles of merger are
24 filed under § 4-32-1208 a constituent limited liability company may amend the
25 plan or abandon the planned merger:

26 (1) As provided in the plan; and

27 (2) Except as prohibited by the plan, with the same consent
28 required to approve the plan.

29
30 4-32-1208. Filings required for merger – Effective date.

31 (a) After each constituent organization has approved a merger,
32 articles of merger must be signed by an authorized representative of each
33 constituent organization and filed with the Secretary of State.

34 (b) The articles of merger shall include:

35 (1) The name and form of each constituent organization and the
36 jurisdiction of its governing statute;

1 (2) The name and form of the surviving organization and the
2 jurisdiction of its governing statute;

3 (3) The date the merger is effective under the governing statute
4 of the surviving organization;

5 (4) Any amendments provided for in the plan of merger for the
6 organizational document of the surviving organization;

7 (5) A statement as to each constituent organization that the
8 merger was approved as required by the organization's governing statute;

9 (6) A statement confirming that the surviving organization has
10 filed a statement appointing an agent for service of process under § 4-20-112
11 if the surviving organization is a foreign organization not authorized to
12 transact business in this state; and

13 (7)(A) A copy of the plan of merger; or

14 (B) A statement that:

15 (i) Contains the address of an office of the
16 surviving organization where the plan of merger is on file; and

17 (ii) A copy of the plan of merger will be furnished
18 by the surviving organization on request and without cost to any shareholder,
19 member, partner, or other owner of any constituent organization; and

20 (8) Any additional information required by the governing statute
21 of any constituent organization.

22 (c) A merger becomes effective under this subchapter:

23 (1) If the surviving organization is a limited liability
24 company, upon the later of:

25 (A) Compliance with subsection (a) of this section; or

26 (B) The date specified in the articles of merger; or

27 (2) If the surviving organization is not a limited liability
28 company, as provided by the governing statute of the surviving organization.

29
30 4-32-1209. Effect of merger.

31 (a) When a merger becomes effective:

32 (1) The surviving organization continues or comes into
33 existence;

34 (2) Each constituent organization that merges into the surviving
35 organization ceases to exist as a separate entity;

36 (3) All property owned by each constituent organization that

1 ceases to exist vests in the surviving organization;

2 (4) All debts, liabilities, and other obligations of each
3 constituent organization that ceases to exist continue as obligations of the
4 surviving organization;

5 (5) An action or proceeding pending by or against a constituent
6 organization that ceases to exist may continue as if the merger had not
7 occurred;

8 (6) Except as prohibited by other law, all of the rights,
9 privileges, immunities, powers, and purposes of each constituent organization
10 that ceases to exist vest in the surviving organization;

11 (7) Except as otherwise provided in the plan of merger, the
12 terms and conditions of the plan of merger take effect;

13 (8) Except as otherwise agreed, if a constituent limited
14 liability company ceases to exist, the merger does not dissolve the limited
15 liability company under § 4-32-901 et seq.; and

16 (9) Any amendments provided for in the articles of merger for
17 the organizational documents of the surviving organization become effective.

18 (b)(1) A surviving organization that is a foreign organization
19 consents to the jurisdiction of the courts of this state to enforce any
20 obligation owed by a constituent organization if before the merger the
21 constituent organization was subject to suit in this state on the obligation.

22 (2) A surviving organization that is a foreign organization and
23 not authorized to transact business in this state may be served with process
24 under § 4-20-113 if the surviving organization:

25 (A) Fails to appoint an agent for service of process under
26 § 4-20-112;

27 (B) No longer has an agent for service of process; or

28 (C) Has an agent for service of process that cannot with
29 reasonable diligence be served.

30
31 4-32-1210. Chapter not exclusive.

32 This chapter does not preclude an entity from being converted or merged
33 under other law.

34
35 SECTION 6. Arkansas Code Title 4, Chapter 46, Subchapter 9 is amended
36 to read as follows:

1 ~~4-46-901. Definitions.~~

2 ~~In this subchapter:~~

3 ~~(1) "General partner" means a partner in a partnership and a~~
4 ~~general partner in a limited partnership.~~

5 ~~(2) "Limited partner" means a limited partner in a limited~~
6 ~~partnership.~~

7 ~~(3) "Limited partnership" means a limited partnership created~~
8 ~~under the Uniform Limited Partnership Act (2001), § 4-47-101 et seq.,~~
9 ~~predecessor law, or comparable law of another jurisdiction.~~

10 ~~(4) "Partner" includes both a general partner and a limited~~
11 ~~partner.~~

12
13 ~~4-46-902. Conversion of partnership to limited partnership.~~

14 ~~(a) A partnership may be converted to a limited partnership pursuant~~
15 ~~to this section.~~

16 ~~(b) The terms and conditions of a conversion of a partnership to a~~
17 ~~limited partnership must be approved by all of the partners or by a number or~~
18 ~~percentage specified for conversion in the partnership agreement.~~

19 ~~(c) After the conversion is approved by the partners, the partnership~~
20 ~~shall file a certificate of limited partnership in the jurisdiction in which~~
21 ~~the limited partnership is to be formed. The certificate must include:~~

22 ~~(1) a statement that the partnership was converted to a limited~~
23 ~~partnership from a partnership;~~

24 ~~(2) its former name; and~~

25 ~~(3) a statement of the number of votes cast by the partners for~~
26 ~~and against the conversion and, if the vote is less than unanimous, the~~
27 ~~number or percentage required to approve the conversion under the partnership~~
28 ~~agreement.~~

29 ~~(d) The conversion takes effect when the certificate of limited~~
30 ~~partnership is filed or at any later date specified in the certificate.~~

31 ~~(e) A general partner who becomes a limited partner as a result of the~~
32 ~~conversion remains liable as a general partner for an obligation incurred by~~
33 ~~the partnership before the conversion takes effect. If the other party to a~~
34 ~~transaction with the limited partnership reasonably believes when entering~~
35 ~~the transaction that the limited partner is a general partner, the limited~~
36 ~~partner is liable for an obligation incurred by the limited partnership~~

1 within ninety (90) days after the conversion takes effect. The limited
2 partner's liability for all other obligations of the limited partnership
3 incurred after the conversion takes effect is that of a limited partner as
4 provided in the Uniform Limited Partnership Act (2001), § 4-47-101 et seq.

5
6 ~~4-46-903. Conversion of limited partnership to partnership.~~

7 ~~(a) A limited partnership may be converted to a partnership pursuant~~
8 ~~to this section.~~

9 ~~(b) Notwithstanding a provision to the contrary in a limited~~
10 ~~partnership agreement, the terms and conditions of a conversion of a limited~~
11 ~~partnership to a partnership must be approved by all of the partners.~~

12 ~~(c) After the conversion is approved by the partners, the limited~~
13 ~~partnership shall cancel its certificate of limited partnership.~~

14 ~~(d) The conversion takes effect when the certificate of limited~~
15 ~~partnership is canceled.~~

16 ~~(e) A limited partner who becomes a general partner as a result of the~~
17 ~~conversion remains liable only as a limited partner for an obligation~~
18 ~~incurred by the limited partnership before the conversion takes effect.~~
19 ~~Except as otherwise provided in § 4-46-306, the partner is liable as a~~
20 ~~general partner for an obligation of the partnership incurred after the~~
21 ~~conversion takes effect.~~

22
23 ~~4-46-904. Effect of conversion—Entity unchanged.~~

24 ~~(a) A partnership or limited partnership that has been converted~~
25 ~~pursuant to this subchapter is for all purposes the same entity that existed~~
26 ~~before the conversion.~~

27 ~~(b) When a conversion takes effect:~~

28 ~~(1) all property owned by the converting partnership or limited~~
29 ~~partnership remains vested in the converted entity;~~

30 ~~(2) all obligations of the converting partnership or limited~~
31 ~~partnership continue as obligations of the converted entity; and~~

32 ~~(3) an action or proceeding pending against the converting~~
33 ~~partnership or limited partnership may be continued as if the conversion had~~
34 ~~not occurred.~~

35
36 ~~4-46-905. Merger of partnerships.~~

1 ~~(a) Pursuant to a plan of merger approved as provided in subsection~~
2 ~~(c) of this section, a partnership may be merged with one (1) or more~~
3 ~~partnerships or limited partnerships.~~

4 ~~(b) The plan of merger must set forth:~~

5 ~~(1) the name of each partnership or limited partnership that is~~
6 ~~a party to the merger;~~

7 ~~(2) the name of the surviving entity into which the other~~
8 ~~partnerships or limited partnerships will merge;~~

9 ~~(3) whether the surviving entity is a partnership or a limited~~
10 ~~partnership and the status of each partner;~~

11 ~~(4) the terms and conditions of the merger;~~

12 ~~(5) the manner and basis of converting the interests of each~~
13 ~~party to the merger into interests or obligations of the surviving entity, or~~
14 ~~into money or other property in whole or part; and~~

15 ~~(6) the street address of the surviving entity's chief executive~~
16 ~~office.~~

17 ~~(c) The plan of merger must be approved:~~

18 ~~(1) in the case of a partnership that is a party to the merger,~~
19 ~~by all of the partners, or a number or percentage specified for merger in the~~
20 ~~partnership agreement; and~~

21 ~~(2) in the case of a limited partnership that is a party to the~~
22 ~~merger, by the vote required for approval of a merger by the law of the State~~
23 ~~or foreign jurisdiction in which the limited partnership is organized and, in~~
24 ~~the absence of such a specifically applicable law, by all of the partners,~~
25 ~~notwithstanding a provision to the contrary in the partnership agreement.~~

26 ~~(d) After a plan of merger is approved and before the merger takes~~
27 ~~effect, the plan may be amended or abandoned as provided in the plan.~~

28 ~~(e) The merger takes effect on the later of:~~

29 ~~(1) the approval of the plan of merger by all parties to the~~
30 ~~merger, as provided in subsection (c) of this section;~~

31 ~~(2) the filing of all documents required by law to be filed as a~~
32 ~~condition to the effectiveness of the merger; or~~

33 ~~(3) any effective date specified in the plan of merger.~~

34 ~~4-46-906. Effect of merger.~~

35 ~~(a) When a merger takes effect:~~

36 ~~(1) the separate existence of every partnership or limited~~

1 partnership that is a party to the merger, other than the surviving entity,
2 ceases;

3 (2) all property owned by each of the merged partnerships or
4 limited partnerships vests in the surviving entity;

5 (3) all obligations of every partnership or limited partnership
6 that is a party to the merger become the obligations of the surviving entity;
7 and

8 (4) an action or proceeding pending against a partnership or
9 limited partnership that is a party to the merger may be continued as if the
10 merger had not occurred, or the surviving entity may be substituted as a
11 party to the action or proceeding.

12 (b) The Secretary of State of this State is the agent for service of
13 process in an action or proceeding against a surviving foreign partnership or
14 limited partnership to enforce an obligation of a domestic partnership or
15 limited partnership that is a party to a merger. The surviving entity shall
16 promptly notify the Secretary of State of the mailing address of its chief
17 executive office and of any change of address. Upon receipt of process, the
18 Secretary of State shall mail a copy of the process to the surviving foreign
19 partnership or limited partnership.

20 (c) A partner of the surviving partnership or limited partnership is
21 liable for:

22 (1) all obligations of a party to the merger for which the
23 partner was personally liable before the merger;

24 (2) all other obligations of the surviving entity incurred
25 before the merger by a party to the merger, but those obligations may be
26 satisfied only out of property of the entity; and

27 (3) except as otherwise provided in § 4-46-306, all obligations
28 of the surviving entity incurred after the merger takes effect, but those
29 obligations may be satisfied only out of property of the entity if the
30 partner is a limited partner.

31 (d) If the obligations incurred before the merger by a party to the
32 merger are not satisfied out of the property of the surviving partnership or
33 limited partnership, the general partners of that party immediately before
34 the effective date of the merger shall contribute the amount necessary to
35 satisfy that party's obligations to the surviving entity, in the manner
36 provided in § 4-46-807 or in the limited partnership act of the jurisdiction

1 in which the party was formed, as the case may be, as if the merged party
2 were dissolved.

3 (e) ~~A partner of a party to a merger who does not become a partner of~~
4 ~~the surviving partnership or limited partnership is dissociated from the~~
5 ~~entity, of which that partner was a partner, as of the date the merger takes~~
6 ~~effect. The surviving entity shall cause the partner's interest in the entity~~
7 ~~to be purchased under § 4-46-701 or another statute specifically applicable~~
8 ~~to that partner's interest with respect to a merger. The surviving entity is~~
9 ~~bound under § 4-46-702 by an act of a general partner dissociated under this~~
10 ~~subsection, and the partner is liable under § 4-46-703 for transactions~~
11 ~~entered into by the surviving entity after the merger takes effect.~~

12
13 ~~4-46-907. Statement of merger.~~

14 (a) ~~After a merger, the surviving partnership or limited partnership~~
15 ~~may file a statement that one (1) or more partnerships or limited~~
16 ~~partnerships have merged into the surviving entity.~~

17 (b) ~~A statement of merger must contain:~~

18 (1) ~~the name of each partnership or limited partnership that is~~
19 ~~a party to the merger;~~

20 (2) ~~the name of the surviving entity into which the other~~
21 ~~partnerships or limited partnership were merged;~~

22 (3) ~~the street address of the surviving entity's chief executive~~
23 ~~office and of an office in this State, if any; and~~

24 (4) ~~whether the surviving entity is a partnership or a limited~~
25 ~~partnership.~~

26 (c) ~~Except as otherwise provided in subsection (d) of this section,~~
27 ~~for the purposes of § 4-46-302, property of the surviving partnership or~~
28 ~~limited partnership which before the merger was held in the name of another~~
29 ~~party to the merger is property held in the name of the surviving entity upon~~
30 ~~filing a statement of merger.~~

31 (d) ~~For the purposes of § 4-46-302, real property of the surviving~~
32 ~~partnership or limited partnership which before the merger was held in the~~
33 ~~name of another party to the merger is property held in the name of the~~
34 ~~surviving entity upon recording a certified copy of the statement of merger~~
35 ~~in the office for recording transfers of that real property.~~

36 (e) ~~A filed and, if appropriate, recorded statement of merger,~~

~~executed and declared to be accurate pursuant to § 4-46-105(e), stating the name of a partnership or limited partnership that is a party to the merger in whose name property was held before the merger and the name of the surviving entity, but not containing all of the other information required by subsection (b) of this section, operates with respect to the partnerships or limited partnerships named to the extent provided in subsections (c) and (d) of this section.~~

~~4-46-908. Nonexclusive.~~

~~This subchapter is not exclusive. Partnerships or limited partnerships may be converted or merged in any manner provided by law.~~

SUBCHAPTER 9 – Conversion and Merger.

4-46-901. Definitions.

In this subchapter:

(1) “Constituent partnership” means a constituent organization that is a partnership (including a limited liability 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 under §§ 4-46-902 through 4-46-905;

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

(5) “Converting organization” means an organization that converts into another organization under § 4-46-902;

(6) “Governing statute” of an organization means the statute that governs the organization’s internal affairs;

(7) “In a record” means maintained or kept on file by the organization at an office of the organization or with the Secretary of State;

(8)(A) “Organization” means:

(i) A partnership, including a limited liability partnership;

(ii) A limited partnership, including a limited liability limited partnership;

(iii) A limited liability company;

(iv) A business trust;

1 (v) A corporation; or
2 (vi) Any other entity that has a governing statute.

3 (B) "Organization" includes a domestic or foreign
4 organization whether or not the organization is organized for profit;

5 (9) "Organizational documents" means:

6 (A) For a domestic or foreign general partnership, its
7 partnership agreement and if applicable statement of qualification;

8 (B) For a domestic or foreign limited partnership, its
9 certificate of limited partnership and partnership agreement;

10 (C) For a domestic or foreign limited liability company,
11 its articles of organization and operating agreement, or the comparable
12 records provided for in its governing statute;

13 (D) For a business trust, its agreement of trust and
14 declaration of trust;

15 (E) For a domestic or foreign corporation for profit, its
16 articles of incorporation, bylaws, and other agreements among its
17 shareholders which are authorized by its governing statute or the comparable
18 records provided for in its governing statute; and

19 (F) For any other organization, the records that:

20 (i) Create the organization;

21 (ii) Determine the internal governance of the
22 organization; and

23 (iii) Determine the relations among the
24 organization's owners, members, and interested parties; and

25 (10) "Personal liability" means individual financial
26 responsibility for a debt, liability, or other obligation of an organization
27 that is imposed on a person that co-owns, has an interest in, or is a member
28 of the organization:

29 (A) By the organization's governing statute solely because
30 the person co-owns, has an interest in, or is a member of the organization;
31 or

32 (B) By the organization's organizational documents under a
33 provision of the organization's governing statute authorizing the documents
34 to make one (1) or more specified persons liable for all or specified debts,
35 liabilities, and other obligations of the organization solely because the
36 person or persons co-own, have an interest in, or are members of the

1 organization; and

2 (11) "Surviving organization" means an organization into which
3 one (1) or more other organizations are merged.

4
5 4-46-902. Conversion.

6 (a) An organization other than a partnership may convert to a
7 partnership, and a partnership may convert to another organization under this
8 section and §§ 4-46-903 through 4-46-905 and a plan of conversion, if the:

9 (1) Other organization's governing statute authorizes the
10 conversion and is complied with; and

11 (2) Conversion is not prohibited by the law of the jurisdiction
12 that enacted the governing statute.

13 (b) A plan of conversion must be in a record and must include the:

14 (1) Name and form of the organization before conversion;

15 (2) Name and form of the organization after conversion; and

16 (3) Terms and conditions of the conversion, including the manner
17 and basis for converting interests in the converting organization into any
18 combination of money, interests in the converted organization, and other
19 consideration; and

20 (4) Organizational documents of the converted organization.

21
22 4-46-903. Action on plan of conversion by converting partnership.

23 (a) Subject to § 4-46-910, a plan of conversion must be consented to
24 by all of the partners of a converting partnership.

25 (b) Subject to § 4-46-910 and any contractual rights, until a
26 conversion is filed under § 4-46-904, a converting partnership may amend the
27 plan or abandon the planned conversion:

28 (1) As provided in the plan; and

29 (2) Except as prohibited by the plan, by the same consent
30 required to approve the plan.

31
32 4-46-904. Filings required for conversion – Effective date.

33 (a)(1) After a plan of conversion is approved a converting partnership
34 shall file articles of conversion with the Secretary of State.

35 (2) The articles of conversion shall include:

36 (A) A statement that the partnership has been converted

1 into another organization;

2 (B) The name and form of the converted organization and
3 the jurisdiction of its governing statute;

4 (C) The date the conversion is effective under the
5 governing statute of the converted organization;

6 (D) A statement that the conversion was approved as
7 required by this subchapter;

8 (E) A statement that the conversion was approved as
9 required by the governing statute of the converted organization;

10 (F) A statement confirming that the converted organization
11 has filed a statement appointing an agent for service of process under § 4-
12 20-112 if the converted organization is a foreign organization not authorized
13 to transact business in this state; and

14 (G)(i) A copy of the plan of conversion; or

15 (ii) A statement that:

16 (a) Contains the address of an office of the
17 organization where the plan of conversion is on file; and

18 (b) A copy of the plan of conversion will be
19 furnished by the converting partnership on request and without cost to any
20 partner of the converting partnership.

21 (b)(1) If the converting organization is not a converting partnership,
22 the converting organization shall file a statement of qualification with the
23 Secretary of State.

24 (2) The statement of qualification shall include, in addition to
25 the information required by § 4-46-1001:

26 (A) A statement that the partnership was converted from
27 another organization;

28 (B) The name and form of the converting organization and
29 the jurisdiction of its governing statute; and

30 (C) A statement that the conversion was approved in a
31 manner that complied with the converting organization's governing statute.

32 (c) A conversion becomes effective:

33 (1) If the converted organization is a partnership, when the
34 articles of conversion indicate that the conversion takes effect; and

35 (2) If the converted organization is not a partnership, as
36 provided by the governing statute of the converted organization.

1
2 4-46-905. Effect of conversion.

3 (a) An organization that has been converted under this subchapter is
4 for all purposes the same entity that existed before the conversion.

5 (b) When a conversion takes effect:

6 (1) All property owned by the converting organization remains
7 vested in the converted organization;

8 (2) All debts, liabilities, and other obligations of the
9 converting organization continue as obligations of the converted
10 organization;

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

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

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

18 (6) Except as otherwise agreed, the conversion does not dissolve
19 a converting partnership under § 4-46-801 et seq.

20 (c)(1) A converted organization that is a foreign organization
21 consents to the jurisdiction of the courts of this state to enforce any
22 obligation owed by the converting partnership, if before the conversion the
23 converting partnership was subject to suit in this state on the obligation.

24 (2) A converted organization that is a foreign organization and
25 not authorized to transact business in this State may be served with process
26 under § 4-20-113 if the converted organization:

27 (A) Fails to appoint an agent for service of process under
28 § 4-20-112;

29 (B) No longer has an agent for service of process; or

30 (C) Has an agent for service of process that cannot with
31 reasonable diligence be served.

32
33 4-46-906. Merger.

34 (a) A partnership may merge with one (1) or more other constituent
35 organizations under this section and §§ 4-46-907 through 4-46-909 and a plan
36 of merger if:

1 (1) The governing statute of each of the other organizations
2 authorizes the merger;

3 (2) The merger is not prohibited by the law of a jurisdiction
4 that enacted any of the governing statutes; and

5 (3) Each of the other organizations complies with its governing
6 statute in effecting the merger.

7 (b) A plan of merger must be in a record and must include:

8 (1) The name and form of each constituent organization;

9 (2) The name and form of the surviving organization;

10 (3) The terms and conditions of the merger, including the manner
11 and basis for converting the interests in each constituent organization into
12 any combination of money, interests in the surviving organization, and other
13 consideration; and

14 (4) Any amendments to be made by the merger to the surviving
15 organization's organizational documents.

16
17 4-46-907. Action on plan of merger by constituent partnership.

18 (a) Subject to § 4-46-910, a plan of merger must be consented to by
19 all of the partners of a constituent partnership.

20 (b) Subject to § 4-46-910 and to any contractual rights, until a
21 merger is filed under § 4-46-908, a constituent partnership may amend the
22 plan or abandon the planned merger:

23 (1) As provided in the plan; and

24 (2) Except as prohibited by the plan, with the same consent
25 required to approve the plan.

26
27 4-46-908. Filings required for merger – Effective date.

28 (a) After each constituent organization has approved a merger,
29 articles of merger must be signed by an authorized representative of each
30 constituent organization and filed with the Secretary of State.

31 (b) The articles of merger shall include:

32 (1) The name and form of each constituent organization and the
33 jurisdiction of its governing statute;

34 (2) The name and form of the surviving organization and the
35 jurisdiction of its governing statute;

36 (3) The date the merger is effective under the governing statute

1 of the surviving organization;

2 (4) Any amendments provided for in the plan of merger for the
3 organizational document of the surviving organization if the organizational
4 document is required to be filed by the governing statute of the surviving
5 organization;

6 (5) A statement as to each constituent organization that the
7 merger was approved as required by the organization's governing statute;

8 (6) A statement confirming that the surviving organization has
9 filed a statement appointing an agent for service of process under § 4-20-112
10 if the surviving organization is a foreign organization not authorized to
11 transact business in this state; and

12 (7)(A) A copy of the plan of merger; or

13 (B) A statement that:

14 (i) Contains the address of an office of the
15 organization where the plan of merger is on file; and

16 (ii) A copy of the plan of merger will be furnished
17 by the surviving organization on request and without cost to any shareholder,
18 member, partner, or other owner of any constituent organization; and

19 (8) Any additional information required by the governing statute
20 of any constituent organization.

21 (c) A merger becomes effective under this subchapter:

22 (1) If the surviving organization is a partnership, upon the
23 later of:

24 (A) Compliance with subsection (a) of this section; or

25 (B) As specified in the articles of merger; or

26 (2) If the surviving organization is not a partnership, as
27 provided by the governing statute of the surviving organization.

28
29 4-46-909. Effect of merger.

30 (a) When a merger becomes effective:

31 (1) The surviving organization continues or comes into
32 existence;

33 (2) Each constituent organization that merges into the surviving
34 organization ceases to exist as a separate entity;

35 (3) All property owned by each constituent organization that
36 ceases to exist vests in the surviving organization;

1 (4) All debts, liabilities, and other obligations of each
2 constituent organization that ceases to exist continue as obligations of the
3 surviving organization;

4 (5) An action or proceeding pending by or against a constituent
5 organization that ceases to exist may continue as if the merger had not
6 occurred;

7 (6) Except as prohibited by other law, all of the rights,
8 privileges, immunities, powers, and purposes of each constituent organization
9 that ceases to exist vest in the surviving organization;

10 (7) Except as otherwise provided in the plan of merger, the
11 terms and conditions of the plan of merger take effect;

12 (8) Except as otherwise agreed, if a constituent partnership
13 ceases to exist, the merger does not dissolve the partnership under § 4-46-
14 801 et seq.; and

15 (9) Any amendments provided for in the articles of merger for
16 the organizational documents of the surviving organization become effective.

17 (b)(1) A surviving organization that is a foreign organization
18 consents to the jurisdiction of the courts of this state to enforce any
19 obligation owed by a constituent organization, if before the merger the
20 constituent organization was subject to suit in this state on the obligation.

21 (2) A surviving organization that is a foreign organization and
22 not authorized to transact business in this state may be served with process
23 under § 4-20-113 if the surviving organization:

24 (A) Fails to appoint an agent for service of process under
25 § 4-20-112;

26 (B) No longer has an agent for service of process; or

27 (C) Has an agent for service of process that cannot with
28 reasonable diligence be served.

29
30 4-46-910. Restrictions on approval of conversions and mergers and on
31 relinquishing limited liability partnership status.

32 (a) If a partner of a converting or constituent partnership will have
33 personal liability with respect to a converted or surviving organization,
34 approval and amendment of a plan of conversion or merger are ineffective
35 without the consent of the partner unless:

36 (1) The partnership's partnership agreement provides for the

1 approval of the conversion or merger with the consent of fewer than all of
2 the partners; and

3 (2) The partner has consented to the provision of the
4 partnership agreement.

5 (b) An amendment to a statement of qualification of a limited
6 liability partnership which deletes a statement that the partnership is a
7 limited liability partnership is ineffective without the consent of each
8 partner unless:

9 (1) The partnership's partnership agreement provides for the
10 amendment with the consent of less than all of the partners; and

11 (2) Each partner that does not consent to the amendment has
12 consented to the provision of the partnership agreement.

13 (c) A partner does not give the consent required by subsection (a) or
14 subsection (b) of this section merely by consenting to a provision of the
15 partnership agreement that permits the partnership agreement to be amended
16 with the consent of fewer than all the partners.

17
18 4-46-911. Liability of partner after conversion or merger.

19 (a) A conversion or merger under this chapter does not discharge any
20 liability under § 4-46-306 or § 4-46-703 of a person that was a partner in or
21 dissociated as a partner from a converting or constituent partnership, but:

22 (1) The provisions of this chapter pertaining to the collection
23 or discharge of the liability continue to apply to the liability;

24 (2) The converted or surviving organization is deemed to be the
25 converting or constituent partnership under § 4-46-306 or § 4-46-703; and

26 (3) If a person is required to pay any amount under this
27 subsection:

28 (A) The person has a right of contribution from each other
29 person that was liable as a partner under § 4-46-306 when the obligation was
30 incurred and has not been released from the obligation under § 4-46-703; and

31 (B) The contribution due from each other person is in
32 proportion to the right to receive distributions in the capacity of partner
33 in effect for each other person when the obligation was incurred.

34 (b) In addition to any other liability provided by law:

35 (1) A person that immediately before a conversion or merger
36 became effective was a partner in a converting or constituent partnership

1 that was not a limited liability partnership is personally liable for each
2 obligation of the converted or surviving organization arising from a
3 transaction with a third party after the conversion or merger becomes
4 effective if at the time the third party enters into the transaction, the
5 third party:

6 (A) Does not have notice of the conversion or merger; and

7 (B) Reasonably believes that:

8 (i) The converted or surviving organization is the
9 converting or constituent partnership;

10 (ii) The converting or constituent partnership is
11 not a limited liability partnership; and

12 (iii) The person is a partner in the converting or
13 constituent partnership; and

14 (2) A person that was dissociated as a partner from a converting
15 or constituent partnership before the conversion or merger became effective
16 is personally liable for each obligation of the converted or surviving
17 organization arising from a transaction with a third party after the
18 conversion or merger becomes effective if:

19 (A) Immediately before the conversion or merger became
20 effective the converting or surviving partnership was not a limited liability
21 partnership; and

22 (B) At the time the third party enters into the
23 transaction less than two (2) years have passed since the person dissociated
24 as a partner and the third party:

25 (i) Does not have notice of the dissociation;

26 (ii) Does not have notice of the conversion or
27 merger; and

28 (iii) Reasonably believes that:

29 (a) The converted or surviving organization is
30 the converting or constituent partnership;

31 (b) The converting or constituent partnership
32 is not a constituent limited liability partnership; and

33 (c) The person is a partner in the converting
34 or constituent partnership.

35
36 4-46-912. Power of partners and persons dissociated as partners to

1 bind organization after conversion or merger.

2 (a) An act of a person that immediately before a conversion or merger
3 became effective was a partner in a converting or constituent partnership
4 binds the converted or surviving organization after the conversion or merger
5 becomes effective if:

6 (1) Before the conversion or merger became effective the act
7 would have bound the converting or constituent partnership under § 4-46-301;
8 and

9 (2) At the time the third party enters into the transaction the
10 third party:

11 (A) Does not have notice of the conversion or merger; and

12 (B) Reasonably believes that the converted or surviving
13 business is the converting or constituent partnership and that the person is
14 a partner in the converting or constituent partnership.

15 (b) An act of a person that before a conversion or merger became
16 effective was dissociated as a partner from a converting or constituent
17 partnership binds the converted or surviving organization after the
18 conversion or merger becomes effective if:

19 (1) Before the conversion or merger became effective the act
20 would have bound the converting or constituent partnership under § 4-46-301
21 if the person had been a partner; and

22 (2) At the time the third party enters into the transaction,
23 less than two (2) years have passed since the person dissociated as a general
24 partner and the third party:

25 (A) Does not have notice of the dissociation;

26 (B) Does not have notice of the conversion or merger; and

27 (C) Reasonably believes that the converted or surviving
28 organization is the converting or constituent partnership and that the person
29 is a partner in the converting or constituent partnership.

30 (c) If a person with knowledge of the conversion or merger causes a
31 converted or surviving organization to incur an obligation under subsection
32 (a) or subsection (b) of this section the person is liable:

33 (1) To the converted or surviving organization for any damage
34 caused to the organization arising from the obligation; and

35 (2) If another person is liable for the obligation, to the other
36 person for any damage caused to the other person arising from the liability.

1
2 4-46-913. Chapter not exclusive.

3 This chapter does not preclude an entity from being converted or merged under
4 other law.

5
6 SECTION 7. Arkansas Code § 4-20-113(b), concerning service upon an
7 entity rather than the registered agent for the entity, is amended to read as
8 follows:

9 (b) If an entity fails to appoint an agent under this subchapter or if
10 an entity that previously filed a registered agent filing with the Secretary
11 of State no longer has a registered agent, or if its registered agent cannot
12 with reasonable diligence be served, the entity may be served by registered
13 or certified mail, return receipt requested, addressed to one or more of the
14 governors of the entity by name at its principal office in accordance with
15 any applicable judicial rules and procedures. The names of the governors and
16 the address of the principal office shall be as shown in the most recent
17 annual report filed with the Secretary of State. If the entity is not
18 required to file an annual report with the Secretary of State, the names of
19 the governors and the address of the principal office shall be as shown in
20 the entity's public organic document. Service is perfected under this
21 subsection at the earliest of:

22 (1) *the date the entity receives the mail;*

23 (2) *the date shown on the return receipt, if signed on behalf of*
24 *the entity; or*

25 (3) *five days after its deposit with the United States Postal*
26 *Service, if correctly addressed and with sufficient postage.*

27
28 SECTION 8. Arkansas Code § 4-26-707 is amended to read as follows:

29 4-26-707. Class voting.

30 (a) In each instance where, under § 4-26-302(a)(4), § 4-26-303, § 4-
31 26-611(e), § 4-26-705(a)(2), § 4-26-903(a)(3)(B), ~~§ 4-26-1003(d)~~ § 4-26-
32 1007(e) and (f), or § 4-26-1101, a provision is made for the class voting of
33 stock, thus requiring the votes of a certain percentage of each separate
34 class of shares to authorize some specific corporate action, each class of
35 shares to which ~~such a~~ a requirement of class voting is applicable shall be
36 bound by the votes which are cast in person or by proxy of at least two-

1 thirds (2/3) of those members of such class who are present in person or
2 represented at the meeting by proxy if due and timely notice of the meeting
3 has been given to all members of said class and at least fifty percent (50%)
4 of the shares embraced in the class are present in person or by proxy.

5 (b) The certificate to articles of amendment under ~~(§ 4-26-304)~~ § 4-
6 26-304, articles of merger or consolidation under ~~(§ 4-26-1004 § 4-26-1009)~~,
7 and articles of dissolution under ~~(§ 4-26-1102)~~ shall, in all situations to
8 which this section applies, be amended and adjusted to show the manner in
9 which the requirements of this section were met in respect to class voting.

10 (c) This section shall apply only to corporations having five hundred
11 (500) or more shareholders.

12
13 SECTION 9. Arkansas Code § 4-27-1302(a)(1), concerning a shareholder's
14 right to dissent and obtain payment of the fair value of the shareholder's
15 shares, is amended to read as follows:

16 (1) consummation of a plan of merger to which the corporation is
17 a party (i) if shareholder approval is required for the merger by ~~§ 4-27-1103~~
18 § 4-27-1107 or the articles of incorporation and the shareholder is entitled
19 to vote on the merger or (ii) if the corporation is a subsidiary that is
20 merged with its parent under ~~§ 4-27-1104~~ § 4-27-1108;

21
22 SECTION 10. Arkansas Code § 4-46-101(13), concerning the definition of
23 "statement" under the Uniform Partnership Act, is amended to read as follows:

24 (13) "Statement" means a statement of partnership authority
25 under § 4-46-303, a statement of denial under § 4-46-304, a statement of
26 dissociation under § 4-46-704, a statement of dissolution under § 4-46-805, a
27 statement of merger under ~~§ 4-46-907~~ § 4-46-908, a statement of qualification
28 under § 4-46-1001, a statement of foreign qualification under § 4-46-1102, or
29 an amendment or cancellation of any of the foregoing.

30
31 SECTION 11. Arkansas Code §§ 4-46-702 and 4-46-703 are amended to read
32 as follows:

33 4-46-702. Dissociated partner's power to bind and liability to
34 partnership.

35 (a) For two (2) years after a partner dissociates without resulting in
36 a dissolution and winding up of the partnership business, the partnership,

1 including a ~~surviving partnership~~ converted or surviving organization under §
2 4-46-901 et seq., is bound by an act of the dissociated partner which would
3 have bound the partnership under § 4-46-301 before dissociation only if at
4 the time of entering into the transaction the other party:

5 (1) reasonably believed that the dissociated partner was then a
6 partner;

7 (2) did not have notice of the partner's dissociation; and

8 (3) is not deemed to have had knowledge under § 4-46-303(e) or
9 notice under § 4-46-704(c).

10 (b) A dissociated partner is liable to the partnership for any damage
11 caused to the partnership arising from an obligation incurred by the
12 dissociated partner after dissociation for which the partnership is liable
13 under subsection (a) of this section.

14
15 4-46-703. Dissociated partner's liability to other persons.

16 (a) A partner's dissociation does not of itself discharge the
17 partner's liability for a partnership obligation incurred before
18 dissociation. A dissociated partner is not liable for a partnership
19 obligation incurred after dissociation, except as otherwise provided in
20 subsection (b) of this section.

21 (b) A partner who dissociates without resulting in a dissolution and
22 winding up of the partnership business is liable as a partner to the other
23 party in a transaction entered into by the partnership, or a ~~surviving~~
24 partnership converted or surviving organization under § 4-46-901 et seq.,
25 within two (2) years after the partner's dissociation, only if the partner is
26 liable for the obligation under § 4-46-306 and at the time of entering into
27 the transaction the other party:

28 (1) reasonably believed that the dissociated partner was then a
29 partner;

30 (2) did not have notice of the partner's dissociation; and

31 (3) is not deemed to have had knowledge under § 4-46-303(e) or
32 notice under § 4-46-704(c).

33 (c) By agreement with the partnership creditor and the partners
34 continuing the business, a dissociated partner may be released from liability
35 for a partnership obligation.

36 (d) A dissociated partner is released from liability for a partnership

1 obligation if a partnership creditor, with notice of the partner's~~+~~
2 dissociation but without the partner's consent, agrees to a material
3 alteration in the nature or time of payment of a partnership obligation.
4

5 SECTION 12. Arkansas Code § 23-63-1619(b)(2), concerning conversions
6 and mergers of captive insurers, is amended to read as follows:

7 (b) A plan for conversion or merger:

8 (1) Must be fair and equitable to the shareholders, in the case
9 of a stock insurer, or the policyholders, in the case of a mutual insurer;
10 and

11 (2) Shall provide for the purchase of the shares of any
12 nonconsenting shareholder of a stock insurer or the policyholder interest of
13 any nonconsenting policyholder of a mutual insurer in substantially the same
14 manner and subject to the same rights and conditions as are accorded a
15 dissenting shareholder or a dissenting policyholder under ~~§ 4-26-1007~~ § 4-26-
16 1011.
17

18 SECTION 13. Transitional Rule. Do not codify.

19 Notwithstanding that the merger or conversion may not have been
20 specifically authorized by Arkansas law at the time of the merger or
21 conversion, the effective date of the merger or conversion shall be
22 retroactive to the original date indicated in filed articles of merger or
23 articles of conversion of any organization that:

24 (1) Converted to or merged with another organization before the
25 effective date of this Act; and

26 (2) Substantially complied with the provisions of this Act.
27

28 /s/ J. Edwards
29

30 **APPROVED: 3/13/2009**
31
32
33
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36