

1 HB163  
2 155635-2  
3 By Representative Poole  
4 RFD: Judiciary  
5 First Read: 14-JAN-14

2  
3  
4  
5  
6  
7  
8 SYNOPSIS: This bill would revise merger and conversion  
9 provisions of the Alabama Business and Nonprofit  
10 Entities Code.

11  
12 A BILL  
13 TO BE ENTITLED  
14 AN ACT

15  
16 To amend Sections 10A-1-4.02, 10A-1-8.01,  
17 10A-1-8.02, and 10A-1-8.04, Code of Alabama 1975, relating to  
18 the Alabama Business and Nonprofit Entities Code; to revise  
19 certain provisions relating to merger and conversion.

20 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

21 Section 1. Sections 10A-1-4.02, 10A-1-8.01,  
22 10A-1-8.02, and 10A-1-8.04 of the Code of Alabama 1975, are  
23 amended to read as follows:

24 "§10A-1-4.02.

25 "(a) The following filing instruments shall be  
26 delivered to the judge of probate for filing, except as the  
27 chapter applicable to an entity or other provision of this

1 title provides for filing by the Secretary of State or another  
2 filing officer:

3 "(1) certificates of formation or any amendments or  
4 restatements thereof;

5 "(2) certificates of termination;

6 "(3) certificates of revocation of termination;

7 "(4) certificates of correction to any filing  
8 instrument required to be delivered to the office of the judge  
9 of probate for filing; and

10 "(5) any other filing instrument required or  
11 permitted under this title to be delivered to the judge of  
12 probate for filing.

13 "(b) Any of the following filing instruments  
14 delivered to the office of the judge of probate for filing  
15 shall be accompanied by an additional exact or conformed copy  
16 to permit the judge of probate to transmit to the Secretary of  
17 State a certified copy thereof as required by subsection (g):

18 "(1) certificates of formation;

19 "(2) amendments to certificates of formation that  
20 alter the name of any entity;

21 "(3) restated certificates of formation;

22 "(4) certificates of termination;

23 "(5) certificates of revocation of termination; and

24 "(6) certificates of correction correcting any of  
25 the foregoing filing instruments.

26 "(c) The following filing instruments shall be  
27 delivered to the Secretary of State for filing:

1           "(1) certificates or articles of merger, ~~articles of~~  
2 ~~consolidation~~ statements of conversion, and articles of share  
3 exchange;

4           "(2) registration of a foreign entity for authority  
5 to transact business in this state;

6           "(3) the annual report of a business corporation,  
7 which may be made as provided in Section 10A-2-16.22 by filing  
8 with the Department of Revenue the public record information  
9 required by Chapter 14A of Title 40, together with the  
10 prescribed fee for the annual report;

11           "(4) for corporations created by an act of the  
12 Legislature prior to the adoption of the Constitution of  
13 Alabama of 1901, or for entities which have resulted from a  
14 merger, share exchange, or conversion, all filing instruments  
15 required by this title to be delivered to the judge of probate  
16 for filing shall be delivered to the Secretary of State for  
17 filing;

18           "(5) any other filing instrument required or  
19 permitted under this title to be delivered to the Secretary of  
20 State for filing;

21           "(6) articles of correction of any filing instrument  
22 required or permitted to be delivered to the Secretary of  
23 State for filing; and

24           "(7) any other filing instrument required or  
25 permitted to be filed under this title and not expressly  
26 required or permitted to be delivered to the Secretary of

1 State or judge of probate or other designated filing office  
2 for filing.

3 "(d) The filing of partnership statements shall be  
4 as provided in Section 10A-8-1.06.

5 "(e) ~~Articles~~ Certificates of merger, articles of  
6 merger or share exchange, and statements of conversion  
7 delivered to the Secretary of State for filing shall be  
8 accompanied by the additional number of exact or conformed  
9 copies of articles as may be required for purposes of  
10 subsection (g) hereof.

11 "(f) If the judge of probate or Secretary of State,  
12 as the case may be, finds that a filing instrument delivered  
13 under this section and Section 10A-1-4.01 substantially  
14 conforms to the provisions of this title that apply to the  
15 entity and that all required fees have been paid, and if, in  
16 the case of a certificate of formation or an amendment to a  
17 certificate of formation that would change the name of the  
18 entity, the judge of probate finds that the name of the entity  
19 has been reserved under Section 10A-1-5.11, the judge of  
20 probate or Secretary of State, as the case may be, shall file  
21 it immediately upon delivery by:

22 "(1) endorsing "filed," together with his or her  
23 name and official title and the date and time of receipt on  
24 the instrument and all copies required hereunder and on the  
25 receipt for the filing fee;

1           "(2) accepting it into the filing system adopted by  
2 the judge or probate or Secretary of State and assigning the  
3 instrument a date of filing; and

4           "(3) delivering a copy thereof, endorsed as provided  
5 in subdivision (1), with the filing fee receipt, or  
6 acknowledgment of receipt of the instrument if no filing fee  
7 is required, to the entity or its representative.

8           "(g) In the case of any of the filing instruments  
9 described in subsection (b), the judge of probate shall within  
10 days transmit a certified copy of the filing instrument to  
11 the Secretary of State. In the case of certificates or  
12 articles of merger, statements of conversion, or articles of  
13 share exchange, the Secretary of State shall promptly transmit  
14 a certified copy of the articles of merger, conversion, or  
15 share exchange thereof to the office of the judge of probate  
16 of the county in which each ~~of the entities' certificates are~~  
17 domestic entity's certificate of formation , if any, is filed.

18           "(h) If the judge of probate or Secretary of State,  
19 as the case may be, refuses to file a filing instrument, he or  
20 she shall return it to the domestic or foreign entity or its  
21 representative within seven days after the filing instrument  
22 was delivered, together with a brief, written explanation of  
23 the reason for his or her refusal.

24           "(i) The judge of probate's or Secretary of State's  
25 duty to file filing instruments under this title is  
26 ministerial. His or her filing or refusing to file a filing  
27 instrument does not:

1           "(1) affect the validity or invalidity of the filing  
2 instrument in whole or in part;

3           "(2) relate to the correctness or incorrectness of  
4 information contained in the filing instrument; or

5           "(3) create a presumption that the filing instrument  
6 is valid or invalid or that information contained in the  
7 filing instrument is correct or incorrect.

8           "(j) The Secretary of State shall keep an  
9 alphabetical list of domestic and foreign entities, the  
10 certificates of formation, or registrations for authority to  
11 transact business in this state, for which are filed in his or  
12 her office, together with the data contained in the filing  
13 instruments.

14           "§10A-1-8.01.

15           "(a) A conversion of an entity ~~to any other form of~~  
16 ~~entity~~ may be accomplished as provided in this section:

17           "(1) CORPORATIONS.

18           "~~a. A corporation may be converted to any other form~~  
19 ~~of entity pursuant to this subsection.~~

20           "~~b.~~ The terms and conditions of a conversion of a  
21 corporation other than a nonprofit corporation ~~to another~~  
22 ~~entity~~ must be approved by all of the corporation's  
23 shareholders except as otherwise provided in the corporation's  
24 ~~articles of incorporation~~ governing documents; but in no case  
25 may the vote required for shareholder approval be set at less  
26 than a majority of the votes entitled to be cast by each  
27 voting group entitled by law to vote separately on the

1 conversion. If the ~~articles of incorporation governing~~  
2 ~~documents~~ provide for approval of a conversion by less than  
3 all of a corporation's shareholders, approval of the  
4 conversion shall constitute corporate action subject to  
5 dissenter's rights pursuant to Article 13 of Chapter 2 of the  
6 Alabama Business Corporation Law. No conversion of a  
7 corporation to a general or limited partnership may be  
8 effected without the consent in writing of each shareholder  
9 who ~~is to be a general partner in~~ will have personal liability  
10 with respect to the converted entity, notwithstanding any  
11 provision in the ~~articles of incorporation governing documents~~  
12 of the converting corporation providing for less than  
13 unanimous shareholder approval for the conversion.

14 "c.b. The terms and conditions of a conversion of a  
15 nonprofit corporation ~~to another form of entity~~ must be  
16 approved by all the corporation's members entitled to vote  
17 thereon, if it is a nonprofit corporation with members with  
18 voting rights, except as otherwise provided in the  
19 corporation's ~~certificate of formation governing documents~~;  
20 but in no case may the ~~certificate of formation governing~~  
21 ~~documents~~ provide for approval by less than a majority of the  
22 members entitled to vote thereon. If the converting nonprofit  
23 corporation has no members, or no members entitled to vote  
24 thereon, the terms and conditions of the conversion must be  
25 approved by a unanimous vote of the board of directors of the  
26 converting nonprofit corporation, except as otherwise provided  
27 in the ~~certificate of formation governing documents~~; but in no

1 case may the ~~certificate of formation~~ governing documents  
2 provide for approval by less than a majority of the board of  
3 directors.

4 "(2) LIMITED PARTNERSHIPS.

5 "~~a. A limited partnership may be converted to any~~  
6 ~~other form of entity pursuant to this subsection.~~

7 "~~b. The terms and conditions of a conversion of a~~  
8 ~~limited partnership to another entity~~ must be approved by all  
9 of the partners or as otherwise provided in the partnership  
10 agreement. No conversion of a limited partnership to a general  
11 partnership may be effected without the consent in writing of  
12 each limited partner who ~~is to be a general partner in~~ will  
13 have personal liability with respect to the converted entity,  
14 notwithstanding any provision in the limited partnership  
15 agreement of the converting limited partnership providing for  
16 approval of the conversion by less than all partners.

17 "(3) LIMITED LIABILITY COMPANIES.

18 "~~a. A limited liability company may be converted to~~  
19 ~~any other form of entity pursuant to this subsection.~~

20 "~~b. The terms and conditions of a conversion of a~~  
21 ~~limited liability company to another entity~~ must be approved  
22 by all of the limited liability company's members or as  
23 otherwise provided in the limited liability company's  
24 governing documents. No conversion of a limited liability  
25 company to a general or limited partnership may be effected  
26 without the consent in writing of each member who ~~is to be a~~  
27 ~~general partner in~~ will have personal liability with respect

1 to the converted entity, notwithstanding any provision in the  
2 governing documents of the converting limited liability  
3 company providing for less than unanimous member approval for  
4 the conversion.

5 "(4) GENERAL PARTNERSHIPS, INCLUDING REGISTERED  
6 LIMITED LIABILITY PARTNERSHIPS.

7 ~~"a. A general partnership, including a registered  
8 limited liability partnership, may be converted to any other  
9 form of entity pursuant to this subsection.~~

10 ~~"b. The terms and conditions of a conversion of a  
11 general partnership to another entity must be approved by all  
12 of the partners or as otherwise provided in the partnership  
13 agreement. No conversion of a registered limited liability  
14 partnership to a general or limited partnership may be  
15 effected without the consent in writing of each partner who ~~is~~  
16 ~~to be a general partner without limited~~ will have personal  
17 liability in with respect to the converted entity,  
18 notwithstanding any provision in the partnership agreement of  
19 the converting registered limited liability partnership  
20 providing for less than unanimous partner approval for the  
21 conversion.~~

22 "(5) REAL ESTATE INVESTMENT TRUST.

23 ~~"a. A real estate investment trust may be converted  
24 to any other form of entity pursuant to this subsection.~~

25 ~~"b. The terms and conditions of a conversion of a  
26 real estate investment trust to another entity must be  
27 approved by all of the trust's shareholders except as~~

1 otherwise provided in the trust's declaration of trust; but in  
2 no case may the vote required for shareholder approval be set  
3 at less than ~~two-thirds~~ a majority of all the votes entitled  
4 to be cast. No conversion of a real estate investment trust to  
5 a general or limited partnership may be effected without the  
6 consent in writing of each shareholder who ~~is to be a general~~  
7 ~~partner in~~ will have personal liability with respect to the  
8 converted entity, notwithstanding any provision in the  
9 declaration of trust of the converting real estate investment  
10 trust providing for less than unanimous shareholder approval  
11 for the conversion.

12 "(6) OTHER ENTITY.

13 "~~a. Any entity not otherwise specified above may be~~  
14 ~~converted to any other form of entity pursuant to this~~  
15 ~~subsection.~~

16 "~~b. The terms and conditions of a conversion of the~~  
17 any entity into any other form of entity not specified above  
18 must be approved by all owners of the converting entity. No  
19 conversion of any entity shall be effected without the consent  
20 in writing of any owner of the converting entity who has  
21 limited liability and who shall become an owner without  
22 limited liability protection of the converted entity.

23 "(7) ENTITY WITHOUT OWNERS.

24 "~~c. If the converting entity does not have owners,~~  
25 the terms and conditions of the conversion must be unanimously  
26 approved by the governing authority of the converting entity.

1           " (b) After the conversion is approved by the  
2 ~~shareholders, partners, members, owners, directors, or other~~  
3 ~~governing authority of the converting entity~~ pursuant to  
4 subsection (a), the following documentation and filing  
5 requirements apply:

6           " (1) If the conversion is to a corporation, limited  
7 liability company, limited partnership, real estate investment  
8 trust, or other entity required to file a certificate of  
9 formation, the ~~appropriate certificate of formation for the~~  
10 ~~converted entity shall be~~ statement of conversion, when filed  
11 ~~in the office in which filing is required for the formation of~~  
12 ~~the converted entity in accordance with Article 4. In addition~~  
13 ~~to any information or statements otherwise required by law to~~  
14 ~~be included in the~~ Section 10A-1-4.02(c)(1), shall be deemed  
15 to:

16           "a. constitute a certificate of formation, any or  
17 amended and restated certificate of formation, as the case may  
18 be, for the converted entity; and

19           "b. shall include the following: satisfy the  
20 requirements of Section 10A-1-4.02(a).

21           "a. A statement that the corporation, limited  
22 liability company, limited partnership, real estate investment  
23 trust, or other converted entity required to file a  
24 certificate of formation was converted from another entity.

25           "(2) In addition to any information or statements  
26 otherwise required by law to be included in a certificate of

1 formation for a filing entity, a statement of conversion shall  
2 include the following:

3 "a. The name and type of entity of the converted  
4 entity and the jurisdiction of its governing statute and its  
5 unique identifying number or other designation as assigned by  
6 the Secretary of State, if any.

7 "b. The former name of the converting entity.

8 "c. A statement that the converting entity has been  
9 converted into the converted entity.

10 "c.d. The public office where the certificate of  
11 formation and certificate of termination, if any, of the  
12 converting entity is filed and the date of the filing thereof.

13 "d.e. If the converted entity is one in which one or  
14 more owners lack limited liability protection, a statement  
15 that each owner of the converting entity who is to become an  
16 owner without limited liability protection of the resulting  
17 entity has consented in writing to the conversion as required  
18 by this section.

19 "e.f. A statement that the conversion was approved  
20 pursuant to this section and, if either the converting entity  
21 or the converted entity is a foreign entity, that the  
22 conversion was approved as required by the governing statute  
23 of such foreign entity.

24 ~~"(2) If (3) After the conversion is to a general~~  
25 ~~partnership or other entity formed without filing a~~  
26 ~~certificate of formation, no instrument is required to be~~

1 ~~filed under subdivision (1), but the converting entity must~~  
2 ~~comply with the filing requirements of subdivision (3).~~

3 ~~"(3) Any converting entity required to file a~~  
4 ~~certificate of termination with respect to the end of its~~  
5 ~~existence shall file the certificate of termination in~~  
6 ~~accordance with Article 4 in the office in which the~~  
7 ~~certificate is required by law to be filed. In addition to any~~  
8 ~~information otherwise required by law to be included in the~~  
9 ~~certificate of termination, the certificate of termination~~  
10 ~~shall include the following:~~

11 ~~"a. A statement that the converting entity was~~  
12 ~~converted to another entity.~~

13 ~~"b. The name of the entity to which the converting~~  
14 ~~entity is converted, and the public office where the converted~~  
15 ~~entity's certificate of formation, if any, is being filed.~~

16 ~~"(4) A general partnership, or other business entity~~  
17 ~~not required to file a certificate of termination, converting~~  
18 ~~to another entity is not required to file any instrument under~~  
19 ~~subdivision (3) but the entity to which the general~~  
20 ~~partnership or other entity not required to file a certificate~~  
21 ~~of termination is converted is required to comply with the~~  
22 ~~filing requirements, if any, of subdivision (1) has become~~  
23 ~~effective in accordance with subsection (c), then, as provided~~  
24 ~~in Section 10A-1-4.02(c) (4), all filing instruments with~~  
25 ~~respect to the converted entity that would otherwise be~~  
26 ~~required by this title to be delivered to the judge of probate~~

1 for filing shall instead be delivered to the Secretary of  
2 State for filing.

3 "(c) A conversion takes effect as follows:

4 "(1) ~~If both a certificate of formation and a~~  
5 ~~certificate of termination are required to be filed, upon the~~  
6 ~~filing of the later to be filed of the certificate of~~  
7 ~~formation of the converted entity and the certificate of~~  
8 ~~termination of the converting entity, if both are required to~~  
9 ~~be filed. If any certificate of formation is required to be~~  
10 ~~filed pursuant to subdivision (1) of subsection (b), any~~  
11 ~~certificate of termination required to be filed pursuant to~~  
12 ~~subdivision (3) of subsection (b) shall not be deemed~~  
13 ~~effective until the filing of the certificate of formation~~  
14 Upon the filing of the statement of conversion in accordance  
15 with Section 10A-1-4.02(c)(1), except as otherwise provided in  
16 subdivision (2).

17 "~~(2) If only a certificate of formation of the~~  
18 ~~converted entity or a certificate of termination of the~~  
19 ~~converting entity is required to be filed, upon the filing of~~  
20 ~~the certificate of formation or certificate of termination.~~

21 "~~(3)~~ (2) Upon any delayed effective date if, but only  
22 if, each of the following requirements is satisfied:

23 "a. A delayed effective date is specified in both  
24 the certificate statement of formation conversion and  
25 ~~certificate of termination, if both are required to be filed,~~  
26 ~~but only if the identical date is specified in both~~  
27 ~~certificates, or if only a certificate of formation or~~

1 ~~certificate of termination is required to be filed, a delayed~~  
2 ~~effective date and time is specified in that certificate; and~~

3 "b. ~~The certificate of formation or certificate of~~  
4 ~~termination, if only one is required, is filed, or the~~  
5 ~~certificate of formation and certificate of termination, if~~  
6 ~~both are required, are filed before the effective date~~  
7 ~~specified~~ If either the converted entity or the converting  
8 entity is a foreign entity, then any filing required under the  
9 governing statute of such foreign entity to effectuate the  
10 conversion is filed before the effective date specified in the  
11 statement of conversion.

12 "~~(4)~~ (3) If a delayed effective date is specified,  
13 and the conditions of subdivision ~~(3)~~ (2) are met, the  
14 conversion is effective at the close of business, unless a  
15 different hour is specified, on that date.

16 "~~(5)~~ ~~If no certificate of formation or certificate~~  
17 ~~of termination is required to be filed, the conversion takes~~  
18 ~~effect as designated by the converting entity.~~

19 "(d) Conversion has the following effects:

20 "(1) a. Any A limited partnership, general  
21 partnership, corporation, limited liability company, real  
22 estate investment trust, or other entity that has been  
23 converted pursuant to this article is for all purposes the  
24 same entity that existed before the conversion; and the  
25 conversion shall constitute a continuation of the existence of  
26 the converting entity in the form of the converted entity. The

1 conversion shall not be deemed to constitute a dissolution or  
2 termination of the converting entity.

3 "b. If the Secretary of State has assigned a unique  
4 identifying number or other designation to the converting  
5 entity, that number or designation shall continue to be  
6 assigned to the converted entity.

7 "(2)a. All property, real, personal, and mixed owned  
8 by the converting entity; all rights, immunities, and  
9 franchises of the converting entity, of a public as well as a  
10 private nature; and all debts or obligations due the  
11 converting entity, ~~are taken and deemed to be transferred~~  
12 ~~shall remain owned and held by,~~ vested in, and due to, the  
13 converted entity ~~without the necessity of any deed or other~~  
14 ~~instrument of conveyance,~~ shall not be deemed to have been  
15 transferred to the converted entity as a consequence of the  
16 conversion, and without payment and without collection by any  
17 filing officer of any deed or other transfer tax or fee shall  
18 not revert or be in any way impaired by reason of the  
19 conversion.

20 "b. A certified copy of ~~any certificate of~~  
21 ~~termination of the converting entity, or in the case of a~~  
22 ~~converting entity that is not required to file a certificate~~  
23 ~~of termination, a the statement containing the information~~  
24 ~~specified in subdivision (3) of subsection (b), may of~~  
25 conversion may be filed in the office of the judge of probate  
26 in any county in which the converting entity owned real  
27 property, to be recorded without payment and without

1 collection by the judge of probate of any deed or other  
2 transfer tax or fee. The judge of probate shall, however, be  
3 entitled to collect the filing fees prescribed ~~in this title~~  
4 by Section 12-19-90. Any filing shall evidence chain of title,  
5 but lack of filing shall not affect the converted entity's  
6 title to the real property.

7 "(3) ~~The converted entity shall~~ All debts,  
8 obligations, and other liabilities of the converting entity  
9 shall continue as the debts, obligations, and liabilities of  
10 the converted entity and the converted entity shall continue  
11 to be responsible and liable for all the liabilities and  
12 obligations of the converting entity. Neither the rights of  
13 creditors, nor any liens upon the property of the converting  
14 entity, shall be impaired by the conversion, and an owner of  
15 the converted entity shall continue to be liable for all  
16 obligations of the converting entity for which the owner was  
17 personally liable before the conversion.

18 "(4) Any claim existing or any action or proceeding  
19 of any kind pending by or against the converting entity ~~may~~  
20 shall be prosecuted or continued as if the conversion had not  
21 occurred, ~~or the converted entity may be substituted in the~~  
22 ~~action or proceeding for the converting entity.~~

23 "(5) a. ~~No owner of an entity with limited liability~~  
24 ~~protection shall, as a result of a conversion, become an owner~~  
25 ~~of an entity without limited liability protection unless the~~  
26 ~~owner with limited liability protection has given approval in~~  
27 ~~writing for the conversion.~~

1           "~~b.~~ An owner with limited liability protection  
2 remains liable, if at all, for an obligation incurred by the  
3 converting entity before the conversion takes effect only to  
4 the extent, if any, the owner would have been liable if the  
5 conversion had not occurred.

6           "~~c.b.~~ An owner with limited liability protection who  
7 becomes an owner without limited liability protection is  
8 liable for an obligation of the converted entity incurred  
9 after conversion to the extent provided for by the laws  
10 applicable to the converted entity.

11           "(6) An owner without limited liability protection  
12 who as a result of a conversion becomes an owner of a  
13 converted entity with limited liability protection remains  
14 liable for an obligation incurred by the converting entity  
15 before the conversion takes effect only to the extent, if any,  
16 the owner would have been liable if the conversion had not  
17 occurred.

18           "§10A-1-8.02.

19           "(a) Pursuant to an approved plan of merger, a  
20 corporation, limited partnership, limited liability company,  
21 general partnership, real estate investment trust, or any  
22 other entity may merge with any other entity or entities,  
23 whether the other entity or entities are the same or another  
24 form of entity, as provided in this section.

25           "(b) A plan of merger shall include the following:

26           "(1) The name of each entity that is a party to the  
27 merger.

1           "(2) The name of the surviving entity into which the  
2 other entity or entities will merge.

3           "(3) The form of the surviving entity and the status  
4 in the surviving entity of each owner of an entity that is a  
5 party to the merger.

6           "(4) The terms and conditions of the merger.

7           "(5) The manner and basis of converting the  
8 interests of each party to the merger into interests or  
9 obligations of the surviving entity, or into money or other  
10 property in whole or part.

11           ~~"(6) The street address of the surviving entity's  
12 principal place of business.~~

13           ~~"(c) Owners shall approve and consent to a plan of  
14 merger as follows A plan of merger may set forth:~~

15           ~~"(1) Amendments to the certificate of formation of  
16 the surviving entity; and~~

17           ~~"(2) Other provisions relating to the merger.~~

18           ~~"(d) A plan of merger shall be approved as follows:~~

19           ~~"(1) CORPORATIONS.~~

20           ~~"a. In the case of a corporation, other than a  
21 nonprofit corporation, that is a party to a merger, the plan  
22 of merger ~~shall~~ must be approved in accordance with the  
23 procedures and by the shareholder vote required by Section  
24 10A-2-11.03 or Section 10A-2-11.04. If the ~~articles of~~  
25 incorporation governing documents of the corporation provide  
26 for approval of a merger by less than all of ~~a~~ the  
27 corporation's shareholders, approval of the merger shall~~

1 constitute corporate action subject to dissenter's rights  
2 pursuant to Article 13 of Chapter 2. No merger of a  
3 corporation into a general or limited partnership may be  
4 effected without the consent in writing of each shareholder  
5 ~~who is to be a general partner in~~ will have personal liability  
6 with respect to the resulting or surviving entity,  
7 notwithstanding any provision in the ~~articles of incorporation~~  
8 governing documents of the corporation that is a party to the  
9 merger providing for less than unanimous shareholder approval  
10 for the conversion.

11 "b. In the case of a nonprofit corporation, the plan  
12 of merger must be approved by all the corporation's members  
13 entitled to vote thereon, if it is a nonprofit corporation  
14 with members with voting rights, except as otherwise provided  
15 in the corporation's governing documents; but in no case may  
16 the governing documents provide for approval by less than a  
17 majority of the members entitled to vote thereon. If the  
18 nonprofit corporation has no members, or no members entitled  
19 to vote thereon, the plan of merger must be approved by a  
20 unanimous vote of the board of directors of the nonprofit  
21 corporation, except as otherwise provided in the governing  
22 documents; but in no case may the governing documents provide  
23 for approval by less than a majority of the board of  
24 directors.

25 "(2) LIMITED PARTNERSHIPS. In the case of a limited  
26 partnership that is a party to the merger, the plan of merger  
27 ~~shall~~ must be approved in writing by all of the partners or as

1 otherwise provided in the partnership agreement. No merger of  
2 a limited partnership with a general partnership in which the  
3 general partnership is the surviving or resulting entity may  
4 be effected without the consent in writing of each limited  
5 partner who ~~is to be a general partner in~~ will have personal  
6 liability with respect to the surviving or resulting entity,  
7 notwithstanding any provision in the limited partnership  
8 agreement of the merging limited partnership providing for  
9 approval of the merger by less than all partners.

10 "(3) LIMITED LIABILITY COMPANIES. In the case of a  
11 limited liability company that is a party to the merger, the  
12 plan of merger ~~shall~~ must be approved in writing by all of the  
13 limited liability company's members or as otherwise provided  
14 in the limited liability company's governing documents. No  
15 merger of a limited liability company with a general or  
16 limited partnership that is the surviving or resulting entity  
17 may be effected without the consent in writing of each member  
18 who ~~is to be a general partner in~~ will have personal liability  
19 with respect to the surviving or resulting entity,  
20 notwithstanding any provision in the governing documents of  
21 the merging limited liability company providing for less than  
22 unanimous shareholder approval for a merger.

23 "(4) GENERAL PARTNERSHIPS, INCLUDING REGISTERED  
24 LIMITED LIABILITY PARTNERSHIPS. In the case of a general  
25 partnership that is a party to the merger, the plan of merger  
26 ~~shall~~ must be approved in writing by all of the partners or as  
27 otherwise provided in the partnership agreement. No merger of

1 a registered limited liability partnership into a general or  
2 limited partnership may be effected without the consent in  
3 writing of each partner who ~~is to be a general partner without~~  
4 ~~limited liability in~~ will have personal liability with respect  
5 to the surviving or resulting entity, notwithstanding any  
6 provision in the partnership agreement of the registered  
7 limited liability partnership providing for less than  
8 unanimous partner approval for a merger.

9 "(5) REAL ESTATE INVESTMENT TRUST. In the case of a  
10 real estate investment trust that is a party to the merger,  
11 the plan of merger ~~shall~~ must be approved in writing by all of  
12 the trust's shareholders except as otherwise provided in the  
13 trust's declaration of trust, but in no case may the vote  
14 required for shareholder approval be set at less than  
15 ~~two-thirds~~ a majority of all the votes entitled to be cast. No  
16 merger of a real estate investment trust with a general or  
17 limited partnership that is to be the surviving or resulting  
18 entity may be effected without the consent in writing of each  
19 shareholder who ~~is to be a general partner in~~ will have  
20 personal liability with respect to the surviving or resulting  
21 business entity.

22 "(6) OTHER ENTITY. In the case of an entity other  
23 than a corporation, limited partnership, limited liability  
24 company, general partnership, or real estate investment trust  
25 that is a party to the merger, by approval in writing of all  
26 owners of the entity. No merger of any the entity shall be  
27 effected without the consent in writing of any owner who has

1 limited liability as an owner of an entity party to the  
2 merger, and who ~~shall become an owner without limited~~  
3 ~~liability of~~ will have personal liability with respect to the  
4 surviving or resulting entity.

5 "~~(d)~~(e) After a plan of merger is approved and  
6 before the merger takes effect, the plan may be amended or  
7 abandoned as provided in the plan, or if the plan does not  
8 provide for amendment or abandonment, in the same manner as  
9 required for the approval of the plan of merger originally.

10 "~~(e)~~(f) The merger takes effect ~~on the later of the~~  
11 ~~following dates and times~~ as follows:

12 "(1) ~~The filing of the certificate of merger with~~  
13 ~~the Secretary of State.~~ Upon the filing of the statement of  
14 merger in accordance with Section 10A-1-4.02(c)(1), except as  
15 otherwise provided in subdivision (2).

16 "(2) ~~Any delayed effective date and time specified~~  
17 ~~in the certificate of merger. If a delayed effective date is~~  
18 ~~specified but no time is specified, the merger is effective at~~  
19 ~~the close of business on that day.~~ Upon any delayed effective  
20 date if, but only if, each of the following requirements is  
21 satisfied:

22 "a. A delayed effective date is specified in the  
23 statement of merger; and

24 "b. If either the converted entity or the merging  
25 entity is a foreign entity, then any filing required under the  
26 governing statute of such foreign entity to effectuate the

1 merger is filed before the effective date specified in the  
2 statement of merger.

3 "(3) If a delayed effective date is specified and  
4 the conditions of subdivision (2) are met, the merger is  
5 effective at the close of business, unless a different hour is  
6 specified, on that date in accordance with and subject to  
7 Section 10A-1-4.12.

8 "~~(f)~~(g) The certificate of merger shall include the  
9 following:

10 "(1) The names of each of the entities which are to  
11 merge and their respective unique identifying numbers or other  
12 designations as assigned by the Secretary of State, if any.

13 "(2) The public office where the certificate of  
14 formation, if any, of each of the parties to the merger is  
15 filed.

16 "(3) A statement that a plan of merger has been  
17 approved ~~and executed~~ by each of the entities which are to  
18 merge in the manner set forth in this article.

19 "(4) If the surviving or resulting entity is one in  
20 which one or more owners lack limited liability protection, a  
21 statement that each owner of an entity party to the merger who  
22 is to be an owner of the surviving or resulting entity without  
23 limited liability protection has consented in writing to the  
24 merger as required by this article.

25 "(5) The name of the surviving or resulting entity.

1           "(6) The date, or date and time, on which the merger  
2 becomes effective if it is not to be effective upon the filing  
3 of the certificate of merger.

4           "(7) That the plan of merger is on file at a place  
5 of business of the surviving or resulting entity, and shall  
6 state the address thereof.

7           "(8) That a copy of the plan of merger will be  
8 furnished by the surviving or resulting entity, on request and  
9 without cost, to any owner of any entity which is a party to  
10 the merger.

11           "(9) If the plan of merger includes any amendments  
12 to the certificate of formation of the surviving or resulting  
13 entity, a statement of all such amendments.

14           "~~(g) A certificate of merger shall act as a~~  
15 ~~certificate of termination for any entity which is not the~~  
16 ~~surviving or resulting entity in the merger.~~

17           "(h) The certificate of merger shall be filed with  
18 the Secretary of State ~~and shall also be recorded in the~~  
19 ~~office of the judge of probate in the county in which the~~  
20 ~~certificate of formation, if any, of each domestic entity that~~  
21 ~~is a party to the merger is filed. When the certificate of~~  
22 ~~merger is filed with the Secretary of State, the matters~~  
23 ~~covered by the certificate shall be effective as stated~~  
24 ~~therein, and a copy of the certificate certified by the~~  
25 ~~Secretary of State shall be conclusive evidence of the matters~~  
26 ~~covered therein in accordance with Section 10A-1-4.02.~~

1           "(i) The merger ~~of entities~~ shall have the following  
2 effects:

3           "(1) The Every other entity party to the merger  
4 merges into the surviving entity which shall be deemed to be  
5 the resulting entity of the merger and the separate existence  
6 of every entity ~~that is a party to the merger~~, other than the  
7 surviving or resulting entity, ceases.

8           "(2) All property, real, personal, and mixed owned  
9 by each of the merged entities; all rights, immunities, and  
10 franchises of the merged entities, of a public as well as a  
11 private nature; and all debts and obligations due the merged  
12 entities, are taken and deemed to be transferred and vested in  
13 the surviving or resulting entity without the necessity of any  
14 deed or other instrument of conveyance to the surviving or  
15 resulting entity and without payment and without collection by  
16 any filing officer of any deed or other transfer tax or fee. A  
17 certified copy of the certificate of merger may be filed in  
18 the real estate records in the office of the judge of probate  
19 in any county in which any entity a party to the merger owned  
20 real property, to be recorded without payment and without  
21 collection by the judge of probate of any deed or other  
22 transfer tax or fee. The judge of probate shall, however, be  
23 entitled to collect the filing fees prescribed by Section  
24 12-19-90. Any filing shall evidence chain of title, but lack  
25 of filing does not affect the resulting entity's title to any  
26 real property.

1           "(3) The surviving or resulting entity shall be  
2 responsible and liable for all the liabilities and obligations  
3 of the entities that are parties to the merger; however,  
4 neither the rights of creditors nor any liens upon the  
5 property of the entities that are parties to the merger shall  
6 be impaired by the merger.

7           "(4) Any claim existing or action or proceeding, of  
8 any kind, pending by or against an entity that is a party to  
9 the merger may be prosecuted or continued as if the merger had  
10 not occurred, or the surviving or resulting entity may be  
11 substituted as a party to the action or proceeding.

12           "(5) Service of process in an action or proceeding  
13 against a surviving or resulting foreign entity to enforce an  
14 obligation of a domestic entity that is a party to a merger  
15 may be made by registered mail addressed to the ~~principal~~  
16 ~~office of the~~ surviving entity ~~as~~ at the address set forth in  
17 the ~~plan~~ certificate of merger or by any method provided by  
18 the Alabama Rules of Civil Procedure. Any notice or demand  
19 required or permitted by law to be served on a domestic entity  
20 may be served on the surviving or resulting foreign entity by  
21 registered mail addressed to the ~~principal office of the~~  
22 surviving entity ~~as~~ at the address set forth in the ~~plan~~  
23 certificate of merger or in any other manner similar to the  
24 procedure provided by the Alabama Rules of Civil Procedure for  
25 the service of process.

26           "(6) a. ~~No owner of an entity with limited liability~~  
27 ~~protection shall as a result of a merger become an owner of an~~

1 ~~entity without limited liability protection unless the owner~~  
2 ~~with limited liability protection has given approval in~~  
3 ~~writing for a merger.~~

4 "b. An owner of an entity with limited liability  
5 protection remains liable, if at all, for an obligation  
6 incurred prior to the merger by an entity that ceases to exist  
7 as a result of the merger only to the extent, if any, that the  
8 owner would have been liable, ~~if at all,~~ under the laws  
9 applicable to owners of the form of entity that ceased to  
10 exist if the merger had not occurred.

11 "c.b. An owner with limited liability protection ~~of~~  
12 ~~an entity that is a party to the merger~~ who, as a result of  
13 the merger, becomes an owner without limited liability  
14 protection of the surviving or resulting entity is liable for  
15 an obligation of the surviving or resulting entity incurred  
16 after merger to the extent provided for by the laws applicable  
17 to the surviving or resulting entity.

18 "(7) An owner without limited liability protection  
19 of an entity that ceases to exist as a result of a merger and  
20 who as a result of the merger becomes an owner of a surviving  
21 or resulting entity with limited liability protection remains  
22 liable for an obligation of the entity that ceases to exist  
23 incurred before the merger takes effect only to the extent, if  
24 any, that the owner would have been liable if the merger had  
25 not occurred.

26 "§10A-1-8.04.

1           "(a) One or more foreign entities may merge with one  
2 or more domestic entities, and a foreign entity may convert to  
3 a domestic entity or a domestic entity may convert to a  
4 foreign entity if:

5           "(1) The merger or conversion is permitted by the  
6 law of the state or country under whose law each foreign  
7 entity is formed and each foreign entity complies with that  
8 law in effecting the merger or conversion.

9           "(2) In the case of a conversion, the foreign entity  
10 complies with ~~subdivision (1) of subsection (b) of Section~~  
11 ~~10A-1-8.01 if it is the converted entity resulting from a~~  
12 ~~conversion, and with subdivision (2) of subsection (b) of~~  
13 ~~Section 10A-1-8.01 if it is the converting entity.~~

14           "(3) In the case of a merger, the foreign entity  
15 complies with subsection ~~(f)~~(g) of Section 10A-1-8.02 if it is  
16 the surviving entity of the merger.

17           "(b) Upon the merger or conversion taking effect,  
18 the surviving foreign entity of a merger and the foreign  
19 entity resulting from a conversion is deemed:

20           "(1) To consent that service of process in a  
21 proceeding to enforce any obligation or any dissenter's rights  
22 of owners of each domestic entity a party to the merger or  
23 conversion may be made by registered mail addressed to the  
24 ~~principal office of the~~ surviving or converted entity at the  
25 address as set forth in the plan certificate of merger or  
26 statement of conversion, as the case may be, or by any method  
27 provided by the Alabama Rules of Civil Procedure. Any notice

1 or demand required or permitted by law to be served on the  
2 domestic entity may be served on the surviving or ~~resulting~~  
3 converted foreign entity by registered mail addressed to ~~the~~  
4 ~~principal office of~~ the surviving or converted entity as at  
5 the address set forth in the plan of merger or statement of  
6 conversion, as the case may be, or in any other manner similar  
7 to the procedure provided by the Alabama Rules of Civil  
8 Procedure for the service of process; and

9 "(2) To agree that it will promptly pay to  
10 dissenting owners of each domestic entity that is a party to  
11 the merger or conversion the amount, if any, to which they are  
12 entitled under Alabama law."

13 Section 2. This act shall become effective on the  
14 first day of the third month following its passage and  
15 approval by the Governor, or its otherwise becoming law.