

1 SB61
2 155635-3
3 By Senator Orr
4 RFD: Judiciary
5 First Read: 14-JAN-14
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1 SB61

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3
4 ENROLLED, An Act,

5 To amend Sections 10A-1-4.02, 10A-1-8.01,
6 10A-1-8.02, and 10A-1-8.04, Code of Alabama 1975, relating to
7 the Alabama Business and Nonprofit Entities Code; to revise
8 certain provisions relating to merger and conversion.

9 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

10 Section 1. Sections 10A-1-4.02, 10A-1-8.01,
11 10A-1-8.02, and 10A-1-8.04 of the Code of Alabama 1975, are
12 amended to read as follows:

13 "§10A-1-4.02.

14 "(a) The following filing instruments shall be
15 delivered to the judge of probate for filing, except as the
16 chapter applicable to an entity or other provision of this
17 title provides for filing by the Secretary of State or another
18 filing officer:

19 "(1) certificates of formation or any amendments or
20 restatements thereof;

21 "(2) certificates of termination;

22 "(3) certificates of revocation of termination;

23 "(4) certificates of correction to any filing
24 instrument required to be delivered to the office of the judge
25 of probate for filing; and

1 "(5) any other filing instrument required or
2 permitted under this title to be delivered to the judge of
3 probate for filing.

4 "(b) Any of the following filing instruments
5 delivered to the office of the judge of probate for filing
6 shall be accompanied by an additional exact or conformed copy
7 to permit the judge of probate to transmit to the Secretary of
8 State a certified copy thereof as required by subsection (g):

9 "(1) certificates of formation;

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

12 "(3) restated certificates of formation;

13 "(4) certificates of termination;

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

15 "(6) certificates of correction correcting any of
16 the foregoing filing instruments.

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

19 "(1) certificates or articles of merger, ~~articles of~~
20 ~~consolidation~~ statements of conversion, and articles of share
21 exchange;

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

24 "(3) the annual report of a business corporation,
25 which may be made as provided in Section 10A-2-16.22 by filing

1 with the Department of Revenue the public record information
2 required by Chapter 14A of Title 40, together with the
3 prescribed fee for the annual report;

4 "(4) for corporations created by an act of the
5 Legislature prior to the adoption of the Constitution of
6 Alabama of 1901, or for entities which have resulted from a
7 merger, share exchange, or conversion, all filing instruments
8 required by this title to be delivered to the judge of probate
9 for filing shall be delivered to the Secretary of State for
10 filing;

11 "(5) any other filing instrument required or
12 permitted under this title to be delivered to the Secretary of
13 State for filing;

14 "(6) articles of correction of any filing instrument
15 required or permitted to be delivered to the Secretary of
16 State for filing; and

17 "(7) any other filing instrument required or
18 permitted to be filed under this title and not expressly
19 required or permitted to be delivered to the Secretary of
20 State or judge of probate or other designated filing office
21 for filing.

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

24 "(e) ~~Articles~~ Certificates of merger, articles of
25 merger or share exchange, and statements of conversion

1 delivered to the Secretary of State for filing shall be
2 accompanied by the additional number of exact or conformed
3 copies of articles as may be required for purposes of
4 subsection (g) hereof.

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

16 "(1) endorsing "filed," together with his or her
17 name and official title and the date and time of receipt on
18 the instrument and all copies required hereunder and on the
19 receipt for the filing fee;

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

23 "(3) delivering a copy thereof, endorsed as provided
24 in subdivision (1), with the filing fee receipt, or

1 acknowledgment of receipt of the instrument if no filing fee
2 is required, to the entity or its representative.

3 "(g) In the case of any of the filing instruments
4 described in subsection (b), the judge of probate shall within
5 10 days transmit a certified copy of the filing instrument to
6 the Secretary of State. In the case of certificates or
7 articles of merger, statements of conversion, or articles of
8 share exchange, the Secretary of State shall promptly transmit
9 a certified copy ~~of the articles of merger, conversion, or~~
10 ~~share exchange~~ thereof to the office of the judge of probate
11 of the county in which each ~~of the entities' certificates are~~
12 domestic entity's certificate of formation , if any, is filed.

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

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

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

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

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

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

12 "§10A-1-8.01.

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

15 "(1) CORPORATIONS.

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

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

1 converting nonprofit corporation, except as otherwise provided
2 in the ~~certificate of formation~~ governing documents; but in no
3 case may the ~~certificate of formation~~ governing documents
4 provide for approval by less than a majority of the board of
5 directors.

6 "(2) LIMITED PARTNERSHIPS.

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

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

19 "(3) LIMITED LIABILITY COMPANIES.

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

22 "~~b.~~ The terms and conditions of a conversion of a
23 limited liability company ~~to another entity~~ must be approved
24 by all of the limited liability company's members or as
25 otherwise provided in the limited liability company's

1 governing documents. No conversion of a limited liability
2 company to a general or limited partnership may be effected
3 without the consent in writing of each member who ~~is to be a~~
4 ~~general partner in~~ will have personal liability with respect
5 to the converted entity, notwithstanding any provision in the
6 governing documents of the converting limited liability
7 company providing for less than unanimous member approval for
8 the conversion.

9 " (4) GENERAL PARTNERSHIPS, INCLUDING REGISTERED
10 LIMITED LIABILITY PARTNERSHIPS.

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

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

1 "(5) REAL ESTATE INVESTMENT TRUST.

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

4 "~~b.~~ The terms and conditions of a conversion of a
5 real estate investment trust ~~to another entity~~ must be
6 approved by all of the trust's shareholders except as
7 otherwise provided in the trust's declaration of trust; but in
8 no case may the vote required for shareholder approval be set
9 at less than ~~two-thirds~~ a majority of all the votes entitled
10 to be cast. No conversion of a real estate investment trust to
11 a general or limited partnership may be effected without the
12 consent in writing of each shareholder who ~~is to be a general~~
13 ~~partner in~~ will have personal liability with respect to the
14 converted entity, notwithstanding any provision in the
15 declaration of trust of the converting real estate investment
16 trust providing for less than unanimous shareholder approval
17 for the conversion.

18 "(6) OTHER ENTITY.

19 "~~a. Any entity not otherwise specified above may be~~
20 ~~converted to any other form of entity pursuant to this~~
21 ~~subsection.~~

22 "~~b.~~ The terms and conditions of a conversion of ~~the~~
23 any entity into any other form of entity not specified above
24 must be approved by all owners of the converting entity. No
25 conversion of any entity shall be effected without the consent

1 in writing of any owner of the converting entity who has
2 limited liability and who shall become an owner without
3 limited liability protection of the converted entity.

4 "(7) ENTITY WITHOUT OWNERS.

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

8 "(b) After the conversion is approved ~~by the~~
9 ~~shareholders, partners, members, owners, directors, or other~~
10 ~~governing authority of the converting entity~~ pursuant to
11 subsection (a), the following documentation and filing
12 requirements apply:

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

23 "a. constitute a certificate of formation, any or
24 amended and restated certificate of formation, as the case may
25 be, for the converted entity; and

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

3 ~~"a. A statement that the corporation, limited~~
4 ~~liability company, limited partnership, real estate investment~~
5 ~~trust, or other converted entity required to file a~~
6 ~~certificate of formation was converted from another entity.~~

7 "(2) In addition to any information or statements
8 otherwise required by law to be included in a certificate of
9 formation for a filing entity, a statement of conversion shall
10 include the following:

11 "a. The name and type of entity of the converted
12 entity and the jurisdiction of its governing statute and its
13 unique identifying number or other designation as assigned by
14 the Secretary of State, if any.

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

16 "c. A statement that the converting entity has been
17 converted into the converted entity.

18 ~~"c.d.~~ The public office where the certificate of
19 formation and certificate of termination, if any, of the
20 converting entity is filed and the date of the filing thereof.

21 ~~"d.e.~~ If the converted entity is one in which one or
22 more owners lack limited liability protection, a statement
23 that each owner of the converting entity who is to become an
24 owner without limited liability protection of the resulting

1 entity has consented in writing to the conversion as required
2 by this section.

3 ~~"e.f.~~ A statement that the conversion was approved
4 pursuant to this section and, if either the converting entity
5 or the converted entity is a foreign entity, that the
6 conversion was approved as required by the governing statute
7 of such foreign entity.

8 ~~"(2) If (3) After the conversion is to a general~~
9 ~~partnership or other entity formed without filing a~~
10 ~~certificate of formation, no instrument is required to be~~
11 ~~filed under subdivision (1), but the converting entity must~~
12 ~~comply with the filing requirements of subdivision (3).~~

13 ~~"(3) Any converting entity required to file a~~
14 ~~certificate of termination with respect to the end of its~~
15 ~~existence shall file the certificate of termination in~~
16 ~~accordance with Article 4 in the office in which the~~
17 ~~certificate is required by law to be filed. In addition to any~~
18 ~~information otherwise required by law to be included in the~~
19 ~~certificate of termination, the certificate of termination~~
20 ~~shall include the following:~~

21 ~~"a. A statement that the converting entity was~~
22 ~~converted to another entity.~~

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

1 ~~"(4) A general partnership, or other business entity~~
2 ~~not required to file a certificate of termination, converting~~
3 ~~to another entity is not required to file any instrument under~~
4 ~~subdivision (3) but the entity to which the general~~
5 ~~partnership or other entity not required to file a certificate~~
6 ~~of termination is converted is required to comply with the~~
7 ~~filing requirements, if any, of subdivision (1) has become~~
8 ~~effective in accordance with subsection (c), then, as provided~~
9 ~~in Section 10A-1-4.02(c) (4), all filing instruments with~~
10 ~~respect to the converted entity that would otherwise be~~
11 ~~required by this title to be delivered to the judge of probate~~
12 ~~for filing shall instead be delivered to the Secretary of~~
13 ~~State for filing.~~

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

15 ~~"(1) If both a certificate of formation and a~~
16 ~~certificate of termination are required to be filed, upon the~~
17 ~~filing of the later to be filed of the certificate of~~
18 ~~formation of the converted entity and the certificate of~~
19 ~~termination of the converting entity, if both are required to~~
20 ~~be filed. If any certificate of formation is required to be~~
21 ~~filed pursuant to subdivision (1) of subsection (b), any~~
22 ~~certificate of termination required to be filed pursuant to~~
23 ~~subdivision (3) of subsection (b) shall not be deemed~~
24 ~~effective until the filing of the certificate of formation~~
25 ~~Upon the filing of the statement of conversion in accordance~~

1 with Section 10A-1-4.02(c)(1), except as otherwise provided in
2 subdivision (2).

3 ~~"(2) If only a certificate of formation of the~~
4 ~~converted entity or a certificate of termination of the~~
5 ~~converting entity is required to be filed, upon the filing of~~
6 ~~the certificate of formation or certificate of termination.~~

7 ~~"(3)(2) Upon any delayed effective date if, but only~~
8 ~~if, each of the following requirements is satisfied:~~

9 "a. A delayed effective date is specified in ~~both~~
10 ~~the certificate statement of formation conversion and~~
11 ~~certificate of termination, if both are required to be filed,~~
12 ~~but only if the identical date is specified in both~~
13 ~~certificates, or if only a certificate of formation or~~
14 ~~certificate of termination is required to be filed, a delayed~~
15 ~~effective date and time is specified in that certificate; and~~

16 "b. ~~The certificate of formation or certificate of~~
17 ~~termination, if only one is required, is filed, or the~~
18 ~~certificate of formation and certificate of termination, if~~
19 ~~both are required, are filed before the effective date~~
20 ~~specified~~ If either the converted entity or the converting
21 entity is a foreign entity, then any filing required under the
22 governing statute of such foreign entity to effectuate the
23 conversion is filed before the effective date specified in the
24 statement of conversion.

1 "~~(4)~~(3) If a delayed effective date is specified,
2 and the conditions of subdivision ~~(3)~~ (2) are met, the
3 conversion is effective at the close of business, unless a
4 different hour is specified, on that date.

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

8 "(d) Conversion has the following effects:

9 "(1)a. Any A limited partnership, general
10 partnership, corporation, limited liability company, real
11 estate investment trust, or other entity that has been
12 converted pursuant to this article is for all purposes the
13 same entity that existed before the conversion; and the
14 conversion shall constitute a continuation of the existence of
15 the converting entity in the form of the converted entity. The
16 conversion shall not be deemed to constitute a dissolution or
17 termination of the converting entity.

18 "b. If the Secretary of State has assigned a unique
19 identifying number or other designation to the converting
20 entity, that number or designation shall continue to be
21 assigned to the converted entity.

22 "(2)a. All property, real, personal, and mixed owned
23 by the converting entity; all rights, immunities, and
24 franchises of the converting entity, of a public as well as a
25 private nature; and all debts or obligations due the

1 ~~converting entity, are taken and deemed to be transferred~~
2 shall remain owned and held by, vested in, and due to, the
3 converted entity ~~without the necessity of any deed or other~~
4 instrument of conveyance, shall not be deemed to have been
5 transferred to the converted entity as a consequence of the
6 conversion, and ~~without payment and without collection by any~~
7 ~~filing officer of any deed or other transfer tax or fee~~ shall
8 not revert or be in any way impaired by reason of the
9 conversion.

10 "b. A certified copy of ~~any certificate of~~
11 ~~termination of the converting entity, or in the case of a~~
12 ~~converting entity that is not required to file a certificate~~
13 ~~of termination,~~ a the statement containing the information
14 ~~specified in subdivision (3) of subsection (b),~~ may of
15 conversion may be filed in the office of the judge of probate
16 in any county in which the converting entity owned real
17 property, to be recorded without payment and without
18 collection by the judge of probate of any deed or other
19 transfer tax or fee. The judge of probate shall, however, be
20 entitled to collect the filing fees prescribed ~~in this title~~
21 by Section 12-19-90. Any filing shall evidence chain of title,
22 but lack of filing shall not affect the converted entity's
23 title to the real property.

24 "(3) ~~The converted entity shall~~ All debts,
25 obligations, and other liabilities of the converting entity

1 shall continue as the debts, obligations, and liabilities of
2 the converted entity and the converted entity shall continue
3 to be responsible and liable for all the liabilities and
4 obligations of the converting entity. Neither the rights of
5 creditors, nor any liens upon the property of the converting
6 entity, shall be impaired by the conversion, and an owner of
7 the converted entity shall continue to be liable for all
8 obligations of the converting entity for which the owner was
9 personally liable before the conversion.

10 "(4) Any claim existing or any action or proceeding
11 of any kind pending by or against the converting entity ~~may~~
12 shall be prosecuted or continued as if the conversion had not
13 occurred, ~~or the converted entity may be substituted in the~~
14 ~~action or proceeding for the converting entity.~~

15 "~~(5) a. No owner of an entity with limited liability~~
16 ~~protection shall, as a result of a conversion, become an owner~~
17 ~~of an entity without limited liability protection unless the~~
18 ~~owner with limited liability protection has given approval in~~
19 ~~writing for the conversion.~~

20 "~~b.~~ An owner with limited liability protection
21 remains liable, if at all, for an obligation incurred by the
22 converting entity before the conversion takes effect only to
23 the extent, if any, the owner would have been liable if the
24 conversion had not occurred.

1 "~~c.~~b. An owner with limited liability protection who
2 becomes an owner without limited liability protection is
3 liable for an obligation of the converted entity incurred
4 after conversion to the extent provided for by the laws
5 applicable to the converted entity.

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

13 "§10A-1-8.02.

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

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

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

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

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

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

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

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

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

13 "(1) Amendments to the certificate of formation of
14 the surviving entity; and

15 "(2) Other provisions relating to the merger.

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

17 "(1) CORPORATIONS.

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

1 "(2) LIMITED PARTNERSHIPS. In the case of a limited
2 partnership that is a party to the merger, the plan of merger
3 ~~shall~~ must be approved in writing by all of the partners or as
4 otherwise provided in the partnership agreement. No merger of
5 a limited partnership with a general partnership in which the
6 general partnership is the surviving or resulting entity may
7 be effected without the consent in writing of each limited
8 partner who ~~is to be a general partner in~~ will have personal
9 liability with respect to the surviving or resulting entity,
10 notwithstanding any provision in the limited partnership
11 agreement of the merging limited partnership providing for
12 approval of the merger by less than all partners.

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

1 "(4) GENERAL PARTNERSHIPS, INCLUDING REGISTERED
2 LIMITED LIABILITY PARTNERSHIPS. In the case of a general
3 partnership that is a party to the merger, the plan of merger
4 ~~shall~~ must be approved in writing by all of the partners or as
5 otherwise provided in the partnership agreement. No merger of
6 a registered limited liability partnership into a general or
7 limited partnership may be effected without the consent in
8 writing of each partner who ~~is to be a general partner without~~
9 ~~limited liability in~~ will have personal liability with respect
10 to the surviving or resulting entity, notwithstanding any
11 provision in the partnership agreement of the registered
12 limited liability partnership providing for less than
13 unanimous partner approval for a merger.

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

1 personal liability with respect to the surviving or resulting
2 business entity.

3 "(6) OTHER ENTITY. In the case of an entity other
4 than a corporation, limited partnership, limited liability
5 company, general partnership, or real estate investment trust
6 that is a party to the merger, by approval in writing of all
7 owners of the entity. No merger of any the entity shall be
8 effected without the consent in writing of any owner who has
9 limited liability as an owner of an entity party to the
10 merger, and who ~~shall become an owner without limited~~
11 ~~liability of~~ will have personal liability with respect to the
12 surviving or resulting entity.

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

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

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

24 "(2) ~~Any delayed effective date and time specified~~
25 ~~in the certificate of merger. If a delayed effective date is~~

1 ~~specified but no time is specified, the merger is effective at~~
2 ~~the close of business on that day. Upon any delayed effective~~
3 ~~date if, but only if, each of the following requirements is~~
4 ~~satisfied:~~

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

7 "b. If either the converted entity or the merging
8 entity is a foreign entity, then any filing required under the
9 governing statute of such foreign entity to effectuate the
10 merger is filed before the effective date specified in the
11 statement of merger.

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

17 ~~"(f)(g)~~ The certificate of merger shall include the
18 following:

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

22 "(2) The public office where the certificate of
23 formation, if any, of each of the parties to the merger is
24 filed.

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

4 "(4) If the surviving or resulting entity is one in
5 which one or more owners lack limited liability protection, a
6 statement that each owner of an entity party to the merger who
7 is to be an owner of the surviving or resulting entity without
8 limited liability protection has consented in writing to the
9 merger as required by this article.

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

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

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

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

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

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

4 "(h) The certificate of merger shall be filed with
5 the Secretary of State ~~and shall also be recorded in the~~
6 ~~office of the judge of probate in the county in which the~~
7 ~~certificate of formation, if any, of each domestic entity that~~
8 ~~is a party to the merger is filed. When the certificate of~~
9 ~~merger is filed with the Secretary of State, the matters~~
10 ~~covered by the certificate shall be effective as stated~~
11 ~~therein, and a copy of the certificate certified by the~~
12 ~~Secretary of State shall be conclusive evidence of the matters~~
13 ~~covered therein in accordance with Section 10A-1-4.02.~~

14 "(i) The merger ~~of entities~~ shall have the following
15 effects:

16 "(1) ~~The~~ Every other entity party to the merger
17 merges into the surviving entity which shall be deemed to be
18 the resulting entity of the merger and the separate existence
19 ~~of every entity that is a party to the merger, other than the~~
20 ~~surviving or resulting entity, ceases.~~

21 "(2) All property, real, personal, and mixed owned
22 by each of the merged entities; all rights, immunities, and
23 franchises of the merged entities, of a public as well as a
24 private nature; and all debts and obligations due the merged
25 entities, are taken and deemed to be transferred and vested in

1 the surviving or resulting entity without the necessity of any
2 deed or other instrument of conveyance to the surviving or
3 resulting entity and without payment and without collection by
4 any filing officer of any deed or other transfer tax or fee. A
5 certified copy of the certificate of merger may be filed in
6 the real estate records in the office of the judge of probate
7 in any county in which any entity a party to the merger owned
8 real property, to be recorded without payment and without
9 collection by the judge of probate of any deed or other
10 transfer tax or fee. The judge of probate shall, however, be
11 entitled to collect the filing fees prescribed by Section
12 12-19-90. Any filing shall evidence chain of title, but lack
13 of filing does not affect the resulting entity's title to any
14 real property.

15 "(3) The surviving or resulting entity shall be
16 responsible and liable for all the liabilities and obligations
17 of the entities that are parties to the merger; however,
18 neither the rights of creditors nor any liens upon the
19 property of the entities that are parties to the merger shall
20 be impaired by the merger.

21 "(4) Any claim existing or action or proceeding, of
22 any kind, pending by or against an entity that is a party to
23 the merger may be prosecuted or continued as if the merger had
24 not occurred, or the surviving or resulting entity may be
25 substituted as a party to the action or proceeding.

1 "(5) Service of process in an action or proceeding
2 against a surviving or resulting foreign entity to enforce an
3 obligation of a domestic entity that is a party to a merger
4 may be made by registered mail addressed to the ~~principal~~
5 ~~office of the~~ surviving entity ~~as~~ at the address set forth in
6 the ~~plan~~ certificate of merger or by any method provided by
7 the Alabama Rules of Civil Procedure. Any notice or demand
8 required or permitted by law to be served on a domestic entity
9 may be served on the surviving or resulting foreign entity by
10 registered mail addressed to the ~~principal office of the~~
11 surviving entity ~~as~~ at the address set forth in the ~~plan~~
12 certificate of merger or in any other manner similar to the
13 procedure provided by the Alabama Rules of Civil Procedure for
14 the service of process.

15 "~~(6) a. No owner of an entity with limited liability~~
16 ~~protection shall as a result of a merger become an owner of an~~
17 ~~entity without limited liability protection unless the owner~~
18 ~~with limited liability protection has given approval in~~
19 ~~writing for a merger.~~

20 "~~b.~~ An owner of an entity with limited liability
21 protection remains liable, if at all, for an obligation
22 incurred prior to the merger by an entity that ceases to exist
23 as a result of the merger only to the extent, if any, that the
24 owner would have been liable, ~~if at all,~~ under the laws

1 applicable to owners of the form of entity that ceased to
2 exist if the merger had not occurred.

3 "c.b. An owner with limited liability protection of
4 ~~an entity that is a party to the merger~~ who, as a result of
5 the merger, becomes an owner without limited liability
6 protection of the surviving or resulting entity is liable for
7 an obligation of the surviving or resulting entity incurred
8 after merger to the extent provided for by the laws applicable
9 to the surviving or resulting entity.

10 "(7) An owner without limited liability protection
11 of an entity that ceases to exist as a result of a merger and
12 who as a result of the merger becomes an owner of a surviving
13 or resulting entity with limited liability protection remains
14 liable for an obligation of the entity that ceases to exist
15 incurred before the merger takes effect only to the extent, if
16 any, that the owner would have been liable if the merger had
17 not occurred.

18 "§10A-1-8.04.

19 "(a) One or more foreign entities may merge with one
20 or more domestic entities, and a foreign entity may convert to
21 a domestic entity or a domestic entity may convert to a
22 foreign entity if:

23 "(1) The merger or conversion is permitted by the
24 law of the state or country under whose law each foreign

1 entity is formed and each foreign entity complies with that
2 law in effecting the merger or conversion.

3 "(2) In the case of a conversion, the foreign entity
4 complies with ~~subdivision (1) of~~ subsection (b) of Section
5 10A-1-8.01 ~~if it is the converted entity resulting from a~~
6 ~~conversion, and with subdivision (2) of subsection (b) of~~
7 ~~Section 10A-1-8.01 if it is the converting entity.~~

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

11 "(b) Upon the merger or conversion taking effect,
12 the surviving foreign entity of a merger and the foreign
13 entity resulting from a conversion is deemed:

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

1 the address set forth in the plan of merger or statement of
2 conversion, as the case may be, or in any other manner similar
3 to the procedure provided by the Alabama Rules of Civil
4 Procedure for the service of process; and

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

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

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President and Presiding Officer of the Senate

Speaker of the House of Representatives

SB61
Senate 28-JAN-14
I hereby certify that the within Act originated in and passed
the Senate.

Patrick Harris
Secretary

House of Representatives
Passed: 01-APR-14

By: Senator Orr