

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 1018

Final Reading

Introduced by Conrad, 46.

Read first time January 17, 2012

Committee: Banking, Commerce and Insurance

A BILL

1 FOR AN ACT relating to business entities; to amend sections 21-2001,
2 21-20,128, 21-20,130, 67-296, and 67-450, Reissue Revised
3 Statutes of Nebraska, and sections 21-2005 and 67-248.02,
4 Revised Statutes Cumulative Supplement, 2010; to change
5 provisions relating to mergers, consolidations, and
6 conversions; to define terms; to harmonize provisions;
7 and to repeal the original sections.
8 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 21-2001, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 21-2001 Sections 21-2001 to 21-20,193 and sections 5 to 8
4 of this act shall be known and may be cited as the Business
5 Corporation Act.

6 Sec. 2. Section 21-2005, Revised Statutes Cumulative
7 Supplement, 2010, is amended to read:

8 21-2005 (1) The Secretary of State shall collect the fees
9 prescribed by this section when the documents described in this
10 subsection are delivered to him or her for filing:

11 (a) Articles of incorporation or documents relating to
12 domestication:

13 (i) If the capital stock is \$10,000 or less, the fee
14 shall be \$60;

15 (ii) If the capital stock is more than \$10,000 but does
16 not exceed \$25,000, the fee shall be \$100;

17 (iii) If the capital stock is more than \$25,000 but does
18 not exceed \$50,000, the fee shall be \$150;

19 (iv) If the capital stock is more than \$50,000 but does
20 not exceed \$75,000, the fee shall be \$225;

21 (v) If the capital stock is more than \$75,000 but does
22 not exceed \$100,000, the fee shall be \$300; and

23 (vi) If the capital stock is more than \$100,000, the fee
24 shall be \$300, plus \$3 additional for each \$1,000 in excess of
25 \$100,000.

1 For purposes of computing this fee, the capital stock of
2 a corporation organized under the laws of any other state that
3 domesticates in this state, and which stock does not have a par
4 value, shall be deemed to have a par value of an amount per share
5 equal to the amount paid in as capital for each of such shares as are
6 then issued and outstanding, and in no event less than one dollar per
7 share.

8 (b) Articles of incorporation or documents relating to
9 domestication if filed by an insurer holding a certificate of
10 authority issued by the Director of Insurance, the fee shall be \$300.

11 (c) Application for reserved name...\$25

12 (d) Notice of transfer of reserved name...\$25

13 (e) Application for registered name...\$25

14 (f) Application for renewal of registered name...\$25

15 (g) Corporation's statement of change of registered agent
16 or registered office or both...\$25

17 (h) Agent's statement of change of registered office for
18 each affected corporation...\$25 not to exceed a total of...\$1,000

19 (i) Agent's statement of resignation...No fee

20 (j) Amendment of articles of incorporation...\$25

21 (k) Restatement of articles of incorporation...\$25 with
22 amendment of articles...\$25

23 (l) Articles of merger, ~~or~~ share exchange, or
24 conversion...\$25

25 (m) Articles of dissolution...\$45

- 1 (n) Articles of revocation of dissolution...\$25
- 2 (o) Certificate of administrative dissolution...No fee
- 3 (p) Application for reinstatement...\$25
- 4 (q) Certificate of reinstatement...No fee
- 5 (r) Certificate of judicial dissolution...No fee
- 6 (s) Application for certificate of authority...\$130
- 7 (t) Application for amended certificate of authority...
- 8 \$25
- 9 (u) Application for certificate of withdrawal...\$25
- 10 (v) Certificate of revocation of authority to transact
- 11 business...No fee
- 12 (w) Articles of correction...\$25
- 13 (x) Application for certificate of existence or
- 14 authorization...\$25
- 15 (y) Any other document required or permitted to be filed
- 16 by the Business Corporation Act...\$25.
- 17 (2) The Secretary of State shall collect a recording fee
- 18 of five dollars per page in addition to the fees set forth in
- 19 subsection (1) of this section.
- 20 (3) The Secretary of State shall collect the following
- 21 fees for copying and certifying the copy of any filed document
- 22 relating to a domestic or foreign corporation:
- 23 (a) One dollar per page for copying; and
- 24 (b) Ten dollars for the certificate.
- 25 (4) All fees set forth in this section shall be collected

1 by the Secretary of State and remitted to the State Treasurer and
2 credited two-thirds to the General Fund and one-third to the
3 Corporation Cash Fund.

4 Sec. 3. Section 21-20,128, Reissue Revised Statutes of
5 Nebraska, is amended to read:

6 21-20,128 (1) One or more corporations may merge ~~into~~
7 another corporation with one or more corporations or business
8 entities, subject to section 21-20,134, if the board of directors of
9 each corporation adopts and its shareholders, if required by section
10 21-20,130, approve a plan of merger, and if each business entity
11 approves the plan of merger in accordance with the laws under which
12 the business entity was formed and in accordance with the applicable
13 requirements of its organizational documents.

14 (2) The plan of merger shall set forth:

15 (a) The name of each corporation or business entity
16 planning to merge and the name of the surviving corporation or
17 business entity into which each ~~other~~ corporation or business entity
18 plans to merge;

19 (b) The terms and conditions of the merger; and

20 (c) The manner and basis of converting the shares of each
21 merging corporation or the interests of each merging business entity
22 into any combination of shares, obligations, ~~or other securities,~~
23 interests, or rights in the surviving corporation or business entity
24 or other consideration. ~~of the surviving or any other corporation or~~
25 into cash or other property in whole or in part.

1 (3) The plan of merger may set forth:

2 (a) Amendments to the articles of incorporation of the
3 surviving corporation or amendments to the organizational documents
4 of the surviving business entity; and

5 (b) Other provisions relating to the merger.

6 (4) As used in this section:

7 (a) Business entity means a foreign corporation; a
8 domestic or foreign partnership; a domestic or foreign limited
9 partnership; or a domestic or foreign limited liability company; and

10 (b) Organizational documents includes:

11 (i) For a foreign corporation, its articles of
12 incorporation, bylaws, and other agreements among its shareholders
13 which are authorized by its governing statute or comparable records
14 as provided in its governing statute;

15 (ii) For a domestic or foreign partnership, its
16 partnership agreement;

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

19 (iv) For a domestic or foreign limited liability company,
20 its certificate or articles of organization and operating agreement
21 or comparable records as provided in its governing statute.

22 Sec. 4. Section 21-20,130, Reissue Revised Statutes of
23 Nebraska, is amended to read:

24 21-20,130 (1) After adopting a plan of merger or share
25 exchange, the board of directors of each corporation party to the

1 merger and the board of directors of the corporation whose shares
2 will be acquired in the share exchange shall submit the plan of
3 merger, except as provided in subsection (7) of this section, or
4 share exchange for approval by its shareholders.

5 (2) For a plan of merger or share exchange to be
6 approved:

7 (a) The board of directors shall recommend the plan of
8 merger or share exchange to the shareholders unless the board of
9 directors determines that because of conflict of interest or other
10 special circumstances it should make no recommendation and
11 communicates the basis for its determination to the shareholders with
12 the plan; and

13 (b) The shareholders entitled to vote shall approve the
14 plan.

15 (3) The board of directors may condition its submission
16 of the proposed merger or share exchange on any basis.

17 (4) The corporation shall notify each shareholder,
18 whether or not entitled to vote, of the proposed shareholders'
19 meeting in accordance with section 21-2055. The notice shall also
20 state that the purpose, or one of the purposes, of the meeting is to
21 consider the plan of merger or share exchange and contain or be
22 accompanied by a copy or summary of the plan.

23 (5) Unless the Business Corporation Act, the articles of
24 incorporation, or the board of directors acting pursuant to
25 subsection (3) of this section requires a greater vote or a vote by

1 voting groups, the plan of merger or share exchange to be authorized
2 shall be approved by each voting group entitled to vote separately on
3 the plan by a ~~two-thirds~~ majority of all the votes entitled to be
4 cast on the plan by that voting group.

5 (6) Separate voting by voting groups shall be required:

6 (a) On a plan of merger if the plan contains a provision
7 that, if contained in a proposed amendment to the articles of
8 incorporation, would require action by one or more separate voting
9 groups on the proposed amendment under section 21-20,119; and

10 (b) On a plan of share exchange by each class or series
11 of shares included in the exchange, with each class or series
12 constituting a separate voting group.

13 (7) Action by the shareholders of the surviving
14 corporation on a plan of merger shall not be required if:

15 (a) The articles of incorporation of the surviving
16 corporation will not differ, except for amendments enumerated in
17 section 21-20,117, from its articles before the merger;

18 (b) Each shareholder of the surviving corporation whose
19 shares were outstanding immediately before the effective date of the
20 merger will hold the same number of shares, with identical
21 designations, preferences, limitations, and relative rights,
22 immediately after the merger;

23 (c) The number of voting shares outstanding immediately
24 after the merger, plus the number of voting shares issuable as a
25 result of the merger, either by the conversion of securities issued

1 pursuant to the merger or the exercise of rights and warrants issued
2 pursuant to the merger, will not exceed by more than twenty percent
3 the total number of voting shares of the surviving corporation
4 outstanding immediately before the merger; and

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

12 (8) For purposes of subsection (7) of this section:

13 (a) Participating shares shall mean shares that entitle
14 their holders to participate without limitation in distributions; and

15 (b) Voting shares shall mean shares that entitle their
16 holders to vote unconditionally in elections of directors.

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

24 Sec. 5. (1) Pursuant to a plan of conversion, a domestic
25 corporation may convert into a domestic limited liability company

1 pursuant to this section, sections 6 to 8 of this act, and sections
2 21-170 to 21-184 or may convert to a foreign limited liability
3 company pursuant to this section, sections 6 to 8 of this act, and
4 the laws under which the foreign limited liability company is formed.

5 (2) A plan of conversion shall be in a record and shall
6 include all of the following:

7 (a) The name of the domestic corporation before
8 conversion;

9 (b) The name and form of the converted entity after
10 conversion;

11 (c) The terms and conditions of the conversion, including
12 the manner and basis for converting the shares of the corporation
13 into any combination of obligations, interests, or rights in the
14 converted entity or other consideration; and

15 (d) The organizational documents of the converted entity.

16 (3) For purposes of this section, record means
17 information that is inscribed on a tangible medium or that is stored
18 in an electronic or other medium and is retrievable in perceivable
19 form.

20 Sec. 6. (1) The plan of conversion shall be adopted by
21 the domestic corporation's board of directors.

22 (2) After adopting the plan of conversion, the domestic
23 corporation's board of directors shall submit the plan to the
24 domestic corporation's shareholders for their approval. The board of
25 directors shall also transmit to the shareholders a recommendation

1 that the shareholders approve the plan, unless the board of directors
2 makes a determination that because of conflicts of interest or other
3 special circumstances it should not make such a recommendation, in
4 which case the board of directors shall transmit to the shareholders
5 the basis for that determination.

6 (3) The domestic corporation shall notify each
7 shareholder of the domestic corporation, whether or not entitled to
8 vote, of the meeting of shareholders at which the plan is to be
9 submitted for approval. The notice shall state that the purpose, or
10 one of the purposes, of the meeting is to consider the plan of
11 conversion and shall contain or be accompanied by a copy or summary
12 of the plan of conversion. The notice shall include or be accompanied
13 by a copy of the organizational documents as they will be in effect
14 immediately after the conversion.

15 (4) The domestic corporation's board of directors may
16 condition its submission of the plan of conversion to the domestic
17 corporation's shareholders on any basis.

18 (5) Unless the articles of incorporation, the bylaws, or
19 the board of directors of the domestic corporation require a greater
20 vote or a greater number of votes to be present, the plan of
21 conversion shall be approved by each voting group entitled to vote
22 separately on the plan by a majority of all the votes entitled to be
23 cast on the plan by that voting group. Separate voting by voting
24 groups shall be required on a plan of conversion if the plan contains
25 a provision that, if contained in a proposed amendment to the

1 articles of incorporation, would require action by one or more
2 separate voting groups on the proposed amendment under section
3 21-20,119.

4 (6) If any provision of the articles of incorporation,
5 the bylaws, or an agreement of the domestic corporation to which any
6 of the directors or shareholders of the domestic corporation are
7 parties, adopted or entered into before the effective date of this
8 act, applies to a merger of the corporation and the document does not
9 refer to a conversion of the corporation, the provision shall be
10 deemed to apply to a conversion of the corporation until such
11 provision is subsequently amended.

12 (7) If, as a result of the conversion, one or more
13 shareholders of the domestic corporation would become subject to
14 owner liability for the debts, obligations, or liabilities of any
15 other person or entity, approval of the plan of conversion shall
16 require the execution, by each such shareholder of the domestic
17 corporation, of a separate written consent to become so subject to
18 such owner liability.

19 (8) After a conversion is authorized, and at any time
20 before a filing is made under section 7 of this act, a domestic
21 corporation that is being converted may amend its plan of conversion
22 or abandon the planned conversion as follows:

23 (a) As provided in the plan of conversion; or

24 (b) Except as prohibited by the plan of conversion, by
25 the same consent as was required to approve the plan of conversion.

1 Sec. 7. (1) After a plan of conversion is approved, a
2 domestic corporation that is being converted shall deliver to the
3 Secretary of State for filing articles of conversion, which shall
4 include all of the following:

5 (a) A statement that the domestic corporation has been
6 converted into another entity;

7 (b) The name and form of the other entity and the
8 jurisdiction of its governing statute;

9 (c) The date the conversion is effective under the
10 governing statute of the converted entity;

11 (d) A statement that the conversion was approved as
12 required by section 6 of this act;

13 (e) A statement that the conversion was approved as
14 required by the governing statute of the converted entity; and

15 (f) A domestic corporation converting into a foreign
16 limited liability company shall deliver to the office of the
17 Secretary of State for filing (i) a certificate which sets forth all
18 of the information required to be in the certificate or other
19 instrument of conversion filed pursuant to the laws under which the
20 resulting foreign limited liability company is formed and (ii) an
21 agreement that the resulting foreign limited liability company may be
22 served with process within or outside this state in any proceeding in
23 the courts of this state for the enforcement of any obligation of the
24 former domestic corporation.

25 (2) The conversion becomes effective as provided by the

1 governing statute of the domestic or foreign limited liability
2 company.

3 Sec. 8. (1) A domestic corporation that has been
4 converted pursuant to the Business Corporation Act is for all
5 purposes the same domestic corporation that existed before the
6 conversion.

7 (2) When a conversion takes effect, all of the following
8 apply:

9 (a) All property owned by the converting entity remains
10 vested in the converted entity. The converting entity shall file a
11 certificate of conversion in the office of the register of deeds for
12 each county in which the converting entity owns real property. Such
13 certificate of conversion shall be indexed against the real property
14 owned;

15 (b) All debts, liabilities, and other obligations of the
16 converting entity continue as obligations of the converted entity;

17 (c) An action or proceeding pending by or against the
18 converting entity may be continued as if the conversion had not
19 occurred;

20 (d) The shares or interests of the converting entity are
21 reclassified into shares, interests, or other securities,
22 obligations, rights to acquire shares, interests, or other
23 securities, or into cash or other property in accordance with the
24 plan of conversion; and the shareholders or interest holders of the
25 converting entity are entitled only to the rights provided to them

1 under the terms of the conversion and to any appraisal rights they
2 may have under the organic law of the converting entity;

3 (e) Except as prohibited by other law, all of the rights,
4 privileges, immunities, powers, and purposes of the converting entity
5 remain vested in the converted entity; and

6 (f) Except as otherwise provided in the plan of
7 conversion, the terms and conditions of the plan of conversion take
8 effect.

9 (3) A converted entity that is a foreign limited
10 liability company consents to the jurisdiction of the courts of this
11 state to enforce any obligation owed by the converting corporation
12 if, before the conversion, the converting corporation was subject to
13 suit in this state on the obligation.

14 Sec. 9. Section 67-248.02, Revised Statutes Cumulative
15 Supplement, 2010, is amended to read:

16 67-248.02 ~~(a) One or more domestic or foreign~~
17 ~~partnerships or limited partnerships may merge or consolidate with~~
18 ~~one or more domestic or foreign partnerships or limited partnerships.~~
19 Sections 67-446 to 67-453 shall govern the merger or consolidation.

20 ~~(b) Pursuant to an agreement, one or more domestic or~~
21 ~~foreign limited partnerships, limited liability companies, or~~
22 ~~corporations may merge into or consolidate with one or more domestic~~
23 ~~or foreign limited partnerships, limited liability companies, or~~
24 ~~corporations. If the resulting entity is a domestic corporation, the~~
25 ~~Business Corporation Act shall govern the merger or consolidation. If~~

1 ~~the surviving or resulting entity is a corporation, the merger or~~
2 ~~consolidation shall be subject to sections 21-20,128 to 21-20,134. If~~
3 ~~the surviving or resulting entity is not a domestic corporation or a~~
4 ~~limited liability company, the board of directors of each domestic~~
5 ~~corporation party to such merger or consolidation shall, by~~
6 ~~resolution adopted by each such board, approve a plan of merger or~~
7 ~~plan of consolidation setting forth information substantially similar~~
8 ~~to that required by sections 21-20,128 to 21-20,134. If the surviving~~
9 ~~or resulting entity is a limited liability company, the Limited~~
10 ~~Liability Company Act or the Nebraska Uniform Limited Liability~~
11 ~~Company Act shall govern the merger or consolidation. Unless~~
12 ~~otherwise provided in the partnership agreement, a plan of merger or~~
13 ~~plan of consolidation shall be approved by each domestic limited~~
14 ~~partnership which is to merge or consolidate (1) by all general~~
15 ~~partners and (2) by limited partners or, if there is more than one~~
16 ~~class or group of limited partners, then by limited partners of each~~
17 ~~class or group of limited partners, in either case, who own more than~~
18 ~~fifty percent of the then current percentage or other interest in the~~
19 ~~profits of the domestic limited partnership owned by all of the~~
20 ~~limited partners or by the limited partners in each class or group,~~
21 ~~as appropriate. Notwithstanding prior approval, an agreement or plan~~
22 ~~of merger or agreement or plan of consolidation may be terminated or~~
23 ~~amended pursuant to a provision for such termination or amendment~~
24 ~~contained in the agreement or plan of merger or agreement or plan of~~
25 ~~consolidation.~~

1 (a)(1) A domestic limited partnership may merge or
2 consolidate with one or more domestic or foreign limited partnerships
3 or other business entities pursuant to an agreement or plan of merger
4 or consolidation adopted in accordance with this section setting
5 forth:

6 (A) The name of each limited partnership or business
7 entity that is a party to the merger or consolidation;

8 (B) The name, type of business entity, and jurisdiction
9 of formation of the surviving limited partnership or business entity
10 into which the limited partnership and such other business entities
11 will merge or the name, type of business entity, and jurisdiction of
12 formation of the new business entity resulting from the consolidation
13 of the limited partnership and the other business entities that are
14 party to a plan of consolidation;

15 (C) The terms and conditions of the merger or
16 consolidation, including the manner and basis of converting the
17 interests of the partners, members, or shareholders, as the case may
18 be, of each limited partnership or business entity that is a party to
19 such merger or consolidation into interests or obligations of the
20 surviving or new limited partnership or business entity resulting
21 therefrom or into money or other property in whole or in part; and

22 (D) Such other provisions as the merging or consolidating
23 limited partnerships or business entities may desire.

24 (2) Notwithstanding the provisions of section 67-450, an
25 agreement or plan of merger or consolidation shall be approved (A) by

1 each domestic limited partnership that is a party thereto in
2 accordance with the voting provisions of its partnership agreement
3 or, if not so provided, by each general partner and by limited
4 partners who own in the aggregate more than a fifty percent interest
5 in the profits of such limited partnership owned by all of the
6 limited partners or, if there is more than one class or group of
7 limited partners, then by limited partners of each class or group of
8 limited partners, in either case, who own in the aggregate more than
9 fifty percent of the then current percentage of other interest in the
10 profits of such limited partnership owned by all of the limited
11 partners in each such class or group and (B) by each other business
12 entity that is a party thereto in accordance with the laws under
13 which such business entity was formed and in accordance with the
14 applicable requirements of its organizational documents.
15 Notwithstanding such approval, at any time before the articles of
16 merger or consolidation are filed, an agreement or plan of merger or
17 of consolidation may be terminated or amended pursuant to a provision
18 for such termination or amendment contained in such agreement or plan
19 of merger or of consolidation.

20 (b) As used in this section:

21 (1) Business entity means a domestic or foreign
22 corporation; a domestic or foreign partnership; a domestic or foreign
23 limited partnership; or a domestic or foreign limited liability
24 company; and

25 (2) Organizational documents includes:

1 (A) For a domestic or foreign corporation, its articles
2 of incorporation, bylaws, and other agreements among its shareholders
3 which are authorized by its governing statute or comparable records
4 as provided in its governing statute;

5 (B) For a domestic or foreign partnership, its
6 partnership agreement;

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

9 (D) For a domestic or foreign limited liability company,
10 its certificate or articles of organization and operating agreement
11 or comparable records as provided in its governing statute.

12 (c) After a plan of merger or consolidation with respect
13 to a domestic limited partnership is approved in accordance with this
14 section, the surviving or resulting business entity shall deliver to
15 the Secretary of State for filing articles of merger or consolidation
16 setting forth:

17 (1) The plan of merger or consolidation;

18 (2) A statement to the effect that the requisite approval
19 was obtained by the partners, members, or shareholders, as the case
20 may be, of each business entity that is a party to such plan of
21 merger or consolidation; and

22 ~~(e)-(3) If the surviving or resulting business entity of~~
23 ~~a merger or consolidation pursuant to subsection (b) of this section~~
24 ~~is not a domestic limited partnership, limited liability company, or~~
25 ~~corporation following a merger or consolidation of one or more~~

1 ~~domestic limited partnerships, limited liability companies, or~~
2 ~~corporations and one or more foreign limited partnerships, limited~~
3 ~~liability companies, or corporations, the surviving or resulting~~
4 ~~entity shall comply with sections 21-20,128 to 21-20,134 and, for~~
5 ~~each such domestic limited partnership, a certificate shall be~~
6 ~~executed and filed in the office of the Secretary of State by the~~
7 ~~surviving or resulting limited partnership, limited liability~~
8 ~~company, or corporation stating that the surviving or resulting~~
9 ~~limited partnership, limited liability company, or corporation agrees~~
10 is not a domestic business entity, an agreement by the surviving or
11 resulting business entity that it may be served with process within
12 or outside this state in any proceeding in the courts of this state
13 for the enforcement of any obligation of such former domestic limited
14 partnership.

15 (d) ~~A~~ If the surviving or resulting business entity of a
16 merger or consolidation pursuant to subsection (b) of under this
17 section to which is a domestic corporation, then the merger or
18 consolidation is a party shall become effective and shall have the
19 effects as provided in sections 21-20,128 to 21-20,134. ~~A~~ If the
20 surviving or resulting business entity of a merger, or consolidation,
21 or conversion to which under this section is a domestic limited
22 liability company, then the merger or consolidation ~~is a party~~ shall
23 become effective and shall have the effects as provided in sections
24 21-170 to 21-184 or 21-2647 to 21-2653. Any other merger or
25 consolidation provided for in the Nebraska Uniform Limited

1 ~~Partnership Act shall become effective as provided in the agreement~~
2 ~~or plan of merger or consolidation. When such merger, consolidation,~~
3 ~~or conversion has become effective, the terms of sections 21-20,128~~
4 ~~to 21-20,134 shall apply if 21-174 or 21-2647 to 21-2652, as the case~~
5 ~~may be. If the surviving or resulting business entity is a~~
6 ~~corporation, the terms of section 21-174, 21-178, or 21-2651 shall~~
7 ~~apply if the surviving or resulting entity is a limited liability~~
8 ~~company, and the following provisions shall apply if of a merger or~~
9 ~~consolidation under this section is a domestic partnership other than~~
10 ~~a limited partnership, then the merger or consolidation shall become~~
11 ~~effective and shall have the effects provided in sections 67-450 to~~
12 ~~67-452. If the surviving or resulting business entity of a merger or~~
13 ~~consolidation is a domestic limited partnership, then:~~

14 (1) The merger or consolidation shall take effect on the
15 later of:

16 (A) The approval of the plan or agreement of merger or
17 consolidation as provided in this section;

18 (B) The filing of all documents required by law to be
19 filed as a condition to the effectiveness of the merger or
20 consolidation; or

21 (C) Any effective date specified in the plan or agreement
22 of merger or consolidation;

23 ~~(1) (2) The several limited partnerships, limited~~
24 ~~liability companies, or corporations and other business entities~~
25 ~~which are parties to the plan or agreement of merger or consolidation~~

1 ~~agreement~~ shall be a single limited partnership which, in the case of
2 a merger, shall be that limited partnership designated in the merger
3 plan or agreement as the surviving limited partnership and, in the
4 case of a consolidation, shall be the new limited partnership
5 provided for in the consolidation plan or agreement;

6 ~~(2) — (3)~~ The separate existence of all limited
7 partnerships, ~~limited liability companies, and corporations~~ and other
8 business entities which are parties to the plan or agreement of
9 merger or consolidation, ~~agreement~~, except the surviving or new
10 limited partnership, shall cease;

11 ~~(3) If the~~ (4) The surviving or new limited partnership
12 ~~is a domestic limited partnership, it~~ shall have all the rights,
13 privileges, immunities, and powers and shall be subject to all the
14 duties and liabilities of a limited partnership organized under the
15 Nebraska Uniform Limited Partnership Act;

16 ~~(4) — (5)~~ The surviving or new limited partnership shall
17 possess all the rights, privileges, immunities, and powers, of a
18 public as well as of a private nature, of each of the merging or
19 consolidating limited partnerships and, other business entities,
20 subject to the Nebraska Uniform Limited Partnership Act., ~~each of~~
21 ~~the merging or consolidating corporations.~~ All property, real,
22 personal, and mixed, all debts due on whatever account, all other
23 things and causes of actions, and all and every other interest
24 belonging to or due to any of the limited partnerships, ~~limited~~
25 liability companies, and corporations and other business entities, as

1 merged or consolidated, shall be taken and deemed to be transferred
2 to and vested in the surviving or new limited partnership without
3 further act and deed and shall thereafter be the property of the
4 surviving or new limited partnership as they were of any of such
5 merging or consolidating business entities. The title to any real
6 property or any interest in such property vested in any of such
7 merging or consolidating business entities shall not revert or be in
8 any way impaired by reason of such merger or consolidation;

9 ~~(5)~~(6) Such surviving or new limited partnership shall
10 be responsible and liable for all the liabilities and obligations of
11 each of the limited partnerships, ~~limited liability companies, or~~
12 ~~corporations~~ and other business entities so merged or consolidated.
13 Any claim existing or action or proceeding pending by or against any
14 of such limited partnerships, ~~limited liability companies, or~~
15 ~~corporations~~ or other business entities may be prosecuted as if such
16 merger or consolidation had not taken place or such surviving or new
17 limited partnership may be substituted in its place. Neither the
18 rights of creditors nor any liens upon the property of any such
19 limited partnerships, ~~limited liability companies, or corporations~~ or
20 other business entities shall be impaired by such merger or
21 consolidation; and

22 ~~(6)~~(7) The equity interests or securities of the
23 ~~corporation or corporations, limited liability company or companies,~~
24 ~~and each~~ limited partnership or ~~limited partnerships~~ other business
25 entity which is a party to the plan or agreement of merger or

1 consolidation that are, under the terms of the merger or
2 consolidation, to be converted or exchanged, shall cease to exist,
3 and the holders of such equity interests or securities shall
4 thereafter be entitled only to the cash, property interests, or
5 securities into which they shall have been converted in accordance
6 with the terms of the plan or agreement of merger or consolidation,
7 subject to any rights under sections 21-20,137 to 21-20,150, the
8 Limited Liability Company Act, or the Nebraska Uniform Limited
9 Liability Company Act or other applicable law.

10 Sec. 10. (a) A domestic limited partnership may convert
11 into a domestic partnership pursuant to sections 67-446 to 67-453. A
12 domestic limited partnership may convert into a domestic limited
13 liability company pursuant to sections 21-170 to 21-184 and may
14 convert into a foreign limited liability company in accordance with
15 this section and the applicable law of the state of formation of such
16 foreign limited liability company. In each case, the conversion of a
17 domestic limited partnership into such other type of entity shall be
18 made pursuant to a plan of conversion setting forth the information
19 required in subdivision (b)(1) of this section and such information
20 required pursuant to the statute under which such conversion shall be
21 effected. Unless otherwise provided in its organizational documents,
22 a plan of conversion shall be approved by the domestic limited
23 partnership by each general partner and by the limited partners who
24 own in the aggregate more than a fifty percent interest in the
25 profits of such limited partnership owned by all of the limited

1 partners or, if there is more than one class or group of limited
2 partners, then by limited partners of each class or group of limited
3 partners, in either case, who own in the aggregate more than fifty
4 percent of the then current percentage of other interest in the
5 profits of such limited partnership owned by all of the limited
6 partners in each such class or group. Notwithstanding such approval,
7 at any time before the articles of conversion are filed, a plan of
8 conversion may be terminated or amended pursuant to a provision for
9 such termination or amendment contained in the plan of conversion.

10 (b)(1) A plan of conversion shall be in a record and
11 shall include all of the following:

12 (A) The name of the domestic limited partnership before
13 conversion;

14 (B) The name and form of the converted entity after
15 conversion;

16 (C) The terms and conditions of the conversion, including
17 the manner and basis for converting the interests of the limited
18 partnership into any combination of obligations, interests, or rights
19 in the converted organization or other consideration; and

20 (D) The organizational documents of the converted
21 business entity.

22 (2) For purposes of this section, record means
23 information that is inscribed on a tangible medium or that is stored
24 in an electronic or other medium and is retrievable in perceivable
25 form.

1 Sec. 11. (a) After a plan of conversion is approved, a
2 domestic limited partnership that is being converted shall deliver to
3 the Secretary of State for filing articles of conversion which shall
4 include all of the following:

5 (1) A statement that the domestic limited partnership has
6 been converted into another entity;

7 (2) The name and form of the other entity and the
8 jurisdiction of its governing statute;

9 (3) The date the conversion is effective under the
10 governing statute of the converted entity;

11 (4) A statement that the conversion was approved as
12 required by sections 67-446 to 67-453;

13 (5) A statement that the conversion was approved as
14 required by the governing statute of the converted entity; and

15 (6) A domestic limited partnership converting into a
16 foreign limited liability company shall deliver to the office of the
17 Secretary of State for filing (A) a certificate which sets forth all
18 of the information required to be in the certificate or other
19 instrument of conversion filed pursuant to the laws under which the
20 resulting foreign limited liability company is formed and (B) an
21 agreement that the resulting foreign limited liability company may be
22 served with process within or outside this state in any proceeding in
23 the courts of this state for the enforcement of any obligation of the
24 former domestic corporation.

25 (b) The conversion shall become effective as provided by

1 the Limited Liability Company Act, the Nebraska Uniform Limited
2 Liability Company Act, the Uniform Partnership Act of 1998, or the
3 governing statute of the foreign limited liability company.

4 Sec. 12. (a) A domestic limited partnership that has been
5 converted pursuant to the Nebraska Uniform Limited Partnership Act is
6 for all purposes the same domestic limited partnership that existed
7 before the conversion.

8 (b) When a conversion takes effect, all of the following
9 apply:

10 (1) All property owned by the converting entity remains
11 vested in the converted entity. The converting entity shall file a
12 certificate of conversion in the office of the register of deeds for
13 each county in which the converting entity owns real property. Such
14 certificate of conversion shall be indexed against the real property
15 owned;

16 (2) All debts, liabilities, and other obligations of the
17 converting entity continue as obligations of the converted entity;

18 (3) An action or proceeding pending by or against the
19 converting entity may be continued as if the conversion had not
20 occurred;

21 (4) The shares or interests of the converting entity are
22 reclassified into shares, interests, other securities, obligations,
23 rights to acquire shares, interests, or other securities, or into
24 cash or other property in accordance with the plan of conversion and
25 the partners, limited partners, or interest holders of the converting

1 entity are entitled only to the rights provided to them under the
2 terms of the conversion and to any appraisal rights they may have
3 under the organic law of the converting entity; and

4 (5) Except as prohibited by other law, all of the rights,
5 privileges, immunities, powers, and purposes of the converting entity
6 remain vested in the converted entity and, except as otherwise
7 provided in the plan of conversion, the terms and conditions of the
8 plan of conversion take effect.

9 (c) A converted entity that is a foreign limited
10 liability company consents to the jurisdiction of the courts of this
11 state to enforce any obligation owed by the converting corporation
12 if, before the conversion, the converting corporation was subject to
13 suit in this state on the obligation.

14 Sec. 13. Any conversion of a limited partnership to a
15 limited liability company filed with the Secretary of State's office
16 and existing on or before the effective date of this act shall
17 continue to be valid.

18 Sec. 14. Section 67-296, Reissue Revised Statutes of
19 Nebraska, is amended to read:

20 67-296 Sections 67-233 to 67-296 and sections 10 to 13 of
21 this act shall be known and may be cited as the Nebraska Uniform
22 Limited Partnership Act.

23 Sec. 15. Section 67-450, Reissue Revised Statutes of
24 Nebraska, is amended to read:

25 67-450 (1) Pursuant to a plan of merger approved as

1 provided in subsection (3) of this section, a partnership may be
2 merged with one or more partnerships or limited partnerships.

3 (2) The plan of merger must set forth:

4 (a) The name of each partnership or limited partnership
5 that is a party to the merger;

6 (b) The name of the surviving entity into which the other
7 partnerships or limited partnerships will merge;

8 (c) Whether the surviving entity is a partnership or a
9 limited partnership and the status of each partner;

10 (d) The terms and conditions of the merger;

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

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

17 (3) The plan of merger must be approved: ~~(a) In in the~~
18 case of a partnership that is a party to the merger, by all of the
19 partners, or a number or percentage specified for merger in the
20 partnership agreement. ~~;~~ and

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

1 ~~to the contrary in the partnership agreement.~~

2 (4) After a plan of merger is approved and before the
3 merger takes effect, the plan may be amended or abandoned as provided
4 in the plan.

5 (5) The merger takes effect on the later of:

6 (a) The approval of the plan of merger by all parties to
7 the merger, as provided in subsection (3) of this section;

8 (b) The filing of all documents required by law to be
9 filed as a condition to the effectiveness of the merger; or

10 (c) Any effective date specified in the plan of merger.

11 Sec. 16. Original sections 21-2001, 21-20,128, 21-20,130,
12 67-296, and 67-450, Reissue Revised Statutes of Nebraska, and
13 sections 21-2005 and 67-248.02, Revised Statutes Cumulative
14 Supplement, 2010, are repealed.