

1 State of Arkansas

2 80th General Assembly

3 Regular Session, 1995

4 By: Representative Courtway

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For An Act To Be Entitled

8 "AN ACT TO AMEND THE SMALL BUSINESS ENTITY TAX PASS
9 THROUGH ACT AND OTHER ACTS RELATING TO PASS THROUGH
10 ENTITIES, TO ALLOW CONVERSIONS, MERGERS AND CONSOLIDATIONS
11 AND TO CLARIFY CERTAIN OTHER PROVISIONS OF THESE ACTS; AND
12 FOR OTHER PURPOSES."

13

14

Subtitle

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21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

22

23 SECTION 1. Subsection (c)(1) of Arkansas Code §4-32-103 is amended to
24 read as follows:

25 "(c) The provisions of subsection (b) shall not apply if the applicant
26 files with the Secretary of State either of the following:

27 (1) The written consent of the holder of a reserved or
28 registered name to use a deceptively similar name; or"

29

30 SECTION 2. Subsection (c) of Arkansas Code §4-32-1201 is amended to
31 read as follows:

32 "(c) As used in this subchapter, _business entity_ or _business
33 entities_ shall mean domestic and foreign limited liability companies,
34 corporations, general partnerships, limited partnerships, registered limited
35 liability partnerships and registered limited liability limited

1 partnerships."

2

3 SECTION 3. Subsection (b) of Arkansas Code §4-32-1202 is amended to
4 read as follows:

5 "(b) Each business entity that is a party to a proposed merger or
6 consolidation shall approve the merger or consolidation in the manner and by
7 the vote required by the laws applicable to such business entity."

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9 SECTION 4. Arkansas Code §4-42-102 is amended by adding the following
10 definition to the end thereof to read as follows:

11 "§4-42-102. Definition of terms.

12 In this chapter:

13 Court includes every court and judge having jurisdiction in the case;

14 Business includes every trade, occupation, or profession;

15 Person includes individuals, partnerships, corporations, and other
16 associations;

17 Bankrupt includes bankrupt under the Federal Bankruptcy Act or
18 insolvent under any state insolvent act;

19 Conveyance includes every assignment, lease, mortgage, or
20 encumbrance;

21 Foreign registered limited liability partnership means a registered
22 limited liability partnership or limited liability partnership formed
23 pursuant to an agreement governed by the laws of another jurisdiction and
24 registered under the laws of such jurisdiction.

25 Professional Service means any type of professional service which may
26 be legally performed only pursuant to a license or other legally mandated
27 personal authorization. For example: the personal service rendered by
28 certified public accountants, architects, engineers, dentists, doctors and
29 attorneys at law;

30 Real property includes land and any interest or estate in land;

31 Registered limited liability partnership means a partnership formed
32 pursuant to an agreement governed by the laws of this state and registered
33 under §4-42-703 of this chapter."

34

35 SECTION 5. Subsection (1) of Arkansas Code §4-42-201 is amended to

1 read as follows:

2 "(1) A partnership is an association of two (2) or more persons to
3 carry on as co-owners a business for profit and includes for all purposes of
4 the laws of this state, including the performance of professional services, a
5 registered limited liability partnership or a professional registered limited
6 liability partnership."

7

8 SECTION 6. Arkansas Code §4-42-307 is amended to read as follows:

9 "§4-42-307. Nature of partner's liability.

10 (1) Except as provided in subsection (2) of this section, all partners
11 are liable:

12 (a) Jointly and severally for everything chargeable to the
13 partnership under §§4-42-305 and 4-42-306;

14 (b) Jointly for all other debts and obligations of the
15 partnership, but any partner may enter into a separate obligation to perform
16 a partnership contract.

17 (2) Subject to subsection (3) of this section and except for the
18 personal liability for acts or omissions of those providing professional
19 service as set forth in §4-42-310, a partner in a registered limited
20 liability partnership is not liable directly or indirectly (including by way
21 of indemnification, contribution, assessment or otherwise) for debts,
22 obligations, and liabilities of or chargeable to the partnership arising,
23 whether in tort, contract or otherwise, from errors, omissions, negligence,
24 incompetence, misconduct, or malpractice committed in the course of the
25 partnership business by another partner or by an employee, agent or
26 representative of the partnership.

27 (3) Subsection (2) of this section shall not affect the liability of a
28 partner in a registered limited liability partnership for his own errors,
29 omissions, negligence, incompetence, or misconduct or that of any person
30 under *his supervision*. *A partner has supervision over a person if the*
31 *partner negligently* participated in the activity in which the errors,
32 omissions, negligence, incompetence, or misconduct were committed by another
33 partner or by an employee, agent, or representative of the partnership.

34 (4) Subsection (2) does not affect the liability of partnership assets
35 for partnership debts and obligations.

1 (5) No partnership organized under this chapter may render
2 professional service within this state except through its partners, employees
3 of its partners, employees and agents who are duly licensed or otherwise
4 legally authorized to render those professional services. However, this
5 provision shall not be interpreted to preclude clerks, secretaries,
6 bookkeepers, technicians and other assistants who are not usually and
7 ordinarily considered by custom and practice to be rendering professional
8 service to the public for which a license or other legal authorization is
9 required from acting as employees or agents of such partnership."

10

11 SECTION 7. Subchapter 3 of Chapter 42 of Title 4 of Arkansas Code is
12 amended by adding a new section to read as follows:

13 "All individuals rendering professional service may be personally
14 liable for any result of that individual's negligent or wrongful acts or
15 omissions. Except as provided in § 4-42-307(3), no partner, employee, or
16 employee of a partner of a professional registered limited liability
17 partnership shall be personally liable for the acts or omissions of any other
18 partner, employee, or employee of a partner of the professional registered
19 limited liability partnership."

20

21 SECTION 8. Arkansas Code §4-42-401 is amended to read as follows:

22 "The rights and duties of the partners in relation to the partnership
23 shall be determined, subject to any agreements between them, by the following
24 rules:

25 (a) Each partner shall be repaid his contributions, whether by way of
26 capital or advances to the partnership property, and share equally in the
27 profits and surplus remaining after all liabilities, including those to
28 partners, are satisfied and except as provided in §4-42-307(2), each partner
29 must contribute toward the losses, whether of capital or otherwise, sustained
30 by the partnership according to his share in the profits;

31 (b) The partnership must indemnify every partner in respect of
32 payments made and personal liabilities reasonably incurred by him in the
33 ordinary and proper conduct of its business or for the preservation of its
34 business or property;

35 (c) A partner, who in aid of the partnership makes any payment or

1 advance beyond the amount of capital which he agreed to contribute, shall be
2 paid interest from the date of the payment or advance;

3 (d) A partner shall receive interest on the capital contributed by him
4 only from the date when repayment should be made;

5 (e) All partners have equal right in the management and conduct of the
6 partnership business;

7 (f) No partner is entitled to remuneration for acting in the
8 partnership business, except that a surviving partner is entitled to
9 reasonable compensation for his services in winding up the partnership
10 affairs;

11 (g) No person can become a member of a partnership without the consent
12 of all the partners;

13 (h) Any difference arising as to ordinary matters connected with the
14 partnership business may be decided by a majority of the partners, but no act
15 in contravention of any agreement between the partners may be done rightfully
16 without the consent of all the partners."

17

18 SECTION 9. Arkansas Code §4-42-606 is amended to read as follows:

19 "§4-42-606. Right of partner to contribution from copartners after
20 dissolution.

21 Where the dissolution is caused by the act, death, or bankruptcy of a
22 partner, each partner is liable to his copartners for his share of any
23 liability created by any partner acting for the partnership as if the
24 partnership had not been dissolved unless:

25 (a) The dissolution being by act of any partner, the partner acting for
26 the partnership had knowledge of the dissolution;

27 (b) The dissolution being by the death or bankruptcy of a partner, the
28 partner acting for the partnership had knowledge or notice of the death or
29 bankruptcy; or

30 (c) The liability is for a debt or obligation for which the partner is
31 not liable as provided in §4-42-307(2)."

32

33 SECTION 10. Subsection (4) of Arkansas Code §4-42-608 is amended to
34 read as follows:

35 "(4) The individual property of a deceased partner shall be liable for

1 those obligations of the partnership incurred while he was a partner and for
2 which he was liable under §4-42-307 but subject to the prior payment of his
3 separate debts."

4

5 SECTION 11. Arkansas Code §4-42-612 is amended to read as follows:

6 "§4-42-612. Rules for distribution.

7 In settling accounts between the partners after dissolution, the
8 following rules shall be observed, subject to any agreement to the contrary:

9 (a) The assets of the partnership are:

10 (I) The partnership property;

11 (II) The contributions of the partners specified in clause (d)

12 of this paragraph;

13 (b) The liabilities of the partnership shall rank in order of payment,
14 as follows:

15 (I) Those owing to creditors other than partners;

16 (II) Those owing to partners other than for capital and profits;

17 (III) Those owing to partners in respect to capital;

18 (IV) Those owing to partners in respect of profits;

19 (c) The assets shall be applied in the order of their declaration in
20 clause (a) of this paragraph to the satisfaction of the liabilities;

21 (d) Except as provided in §4-42-307(2):

22 (I) The partners shall contribute, as provided by §4-42-401(a),
23 the amount necessary to satisfy the liabilities; and

24 (II) If any, but not all, of the partners are insolvent or not,
25 being subject to process, refuse to contribute, the other partners shall
26 contribute their share of the liabilities, and, in the relative proportions
27 in which they share the profits, the additional amount necessary to pay the
28 liabilities;

29 (e) An assignee for the benefit of creditors or any person appointed
30 by the court shall have the right to enforce the contributions specified in
31 clause (d) of this paragraph;

32 (f) Any partner or his legal representative shall have the right to
33 enforce the contributions specified in clause (d) of this paragraph, to the
34 extent of the amount which he has paid in excess of his share of the
35 liability;

1 (g) The individual property of a deceased partner shall be liable for
2 the contributions specified in clause (d) of this paragraph;

3 (h) When partnership property and the individual properties of the
4 partners are in possession of a court for distribution, partnership creditors
5 shall have priority on partnership property and separate creditors on
6 individual property, saving the rights of lien or secured creditors as
7 heretofore;

8 (i) Where a partner has become bankrupt or his estate is insolvent the
9 claims against his separate property shall rank in the following order:

10 (I) Those owing to separate creditors;

11 (II) Those owing to partnership creditors;

12 (III) Those owing to partners by way of contribution."
13

14 SECTION 12. Subchapter 7 of Chapter 42 of Title 4 of the Arkansas Code
15 is amended by adding the following new sections to the end thereof:

16 "4-42-703. Registered Limited Liability Partnerships.

17 (1) To become and continue as a registered limited liability
18 partnership, a partnership shall file with the Secretary of State an
19 application stating the name of the partnership; the address of its principal
20 office; if the partnership's principal office is not located in this state,
21 the address of a registered office and the name and address of a registered
22 agent for service of process in this state, which the partnership shall be
23 required to maintain; a brief statement of the business in which the
24 partnership engages; and that the partnership thereby applies for status as a
25 registered limited liability partnership.

26 (2) The application shall be executed by one or more partners
27 authorized to execute an application.

28 (3) The application shall be accompanied by a filing fee of fifty
29 dollars (\$50).

30 (4) The Secretary of State shall register as a registered limited
31 liability partnership any partnership that submits a completed application
32 with the required filing fee.

33 (5) Registration is effective after the date an application is filed
34 unless it is voluntarily withdrawn by filing with the Secretary of State a
35 written withdrawal notice executed by one or more partners authorized to

1 execute a withdrawal notice.

2 (6) A partnership continues as a registered limited liability
3 partnership if there has been substantial compliance with the requirements of
4 this chapter. The status of a partnership as a registered limited liability
5 partnership, and the liability of the partners thereof, shall not be affected
6 by:

7 (a) Errors in the information stated in an application under
8 subsection (1) of this section or a notice under subsection (5) of this
9 section, or

10 (b) Changes after the filing of such an application or notice in
11 the information stated in the application or notice.

12 (7) A partnership that registers as a registered limited liability
13 partnership shall not be deemed to have dissolved as a result thereof and is
14 for all purposes the same partnership that existed before the registration
15 and continues to be a partnership under the laws of this state. If a
16 registered limited liability partnership dissolves, a partnership which is a
17 successor to such registered limited liability partnership and which intends
18 to be a registered limited liability partnership shall not be required to
19 file a new application and shall be deemed to have filed any documents
20 required or permitted under this chapter which were filed by the predecessor
21 partnership.

22 (8) Any registered limited liability partnership formed pursuant to an
23 agreement governed by this chapter shall be exempt from the filing
24 requirements of §§ 4-70-201 to 206.

25 (9) The Secretary of State may provide forms for application under
26 subsection (1) of this section.

27 (10) A suit may be brought by or against a registered limited
28 liability partnership in its own name.

29

30 4-42-704. Name of Registered Limited Liability Partnerships.

31 The name of a registered limited liability partnership shall contain
32 the words Registered Limited Liability Partnership or the abbreviations
33 L.L.P. or LLP as the last words or letters of its name, and the word
34 Limited may be abbreviated as Ltd.

35

1 4-42-705. Applicability of Chapter to Foreign and Interstate Commerce.

2 (1) A partnership, including a registered limited liability
3 partnership, formed and existing pursuant to an agreement governed by this
4 chapter, may conduct its business, carry on its operations, and have and
5 exercise the powers granted by this chapter in any state, territory,
6 district, or possession of the United States or in any foreign country.

7 (2) It is the intent of the legislature that the legal existence of
8 registered limited liability partnerships formed and existing pursuant to an
9 agreement governed by this chapter shall be recognized outside the boundaries
10 of this state and that the laws of this state governing such registered
11 limited liability partnerships transacting business outside this state be
12 granted the protection of full faith and credit under the Constitution of the
13 United States.

14 (3) The internal affairs of a partnership, including registered
15 limited liability partnerships, formed and existing pursuant to an agreement
16 governed by this chapter, including the liability of partners for debts,
17 obligations, and liabilities of or chargeable to the partnership, shall be
18 subject to and governed by the laws of this state.

19 (4) Before transacting business in this state, a foreign registered
20 limited liability partnership shall file a notice with the Secretary of
21 State, on such forms as the Secretary shall provide, stating: the name of the
22 partnership; the jurisdiction the laws of which govern its partnership
23 agreement and under which it is registered as a limited liability
24 partnership; the address of its principal office; if the partnership's
25 principal office is not located in this state, the address of a registered
26 office and the name and address of a registered agent for service of process
27 in this state; a brief statement of the business in which the partnership
28 engages; any other information that the partnership determines to include;
29 and a statement that the partnership is a registered limited liability
30 partnership. Such notice shall be accompanied by a fee of three hundred
31 dollars (\$300). Such notice shall be effective until withdrawn or cancelled.
32 The filing of such notice with the Secretary of State shall make it
33 unnecessary to file any other documents under §§ 4-70-201 to 206.

34 (5) A foreign registered limited liability partnership shall file an
35 amended notice within ninety (90) days of a change in its name or registered

1 office, or in the name or address of the registered agent. Such amended
2 notice shall be accompanied by a fee of fifty dollars (\$50).

3 (6) The failure of a foreign registered limited liability partnership
4 to file a notice or to appoint and maintain a registered agent in this state
5 shall not affect the liability of the partners or impair the validity of any
6 contract or act of the foreign registered limited liability partnership and
7 shall not prevent the foreign registered limited liability partnership from
8 defending any action or proceeding in any court of this state, but the
9 foreign registered limited liability partnership shall not maintain any
10 action or proceeding in any court of this state until it has filed such
11 notice. A foreign limited liability partnership, by transacting business in
12 this state without filing a notice, appoints the Secretary of State as its
13 agent for service of process with respect to causes of action arising out of
14 the transaction of business in this state.

15 (7) It is the policy of this state that the internal affairs of
16 foreign registered limited liability partnerships, including the liability of
17 partners for debts, obligations, and liabilities of or chargeable to
18 partnerships, shall be subject to and governed by the laws of such other
19 jurisdictions.

20 (8) The name of a foreign registered limited liability partnership
21 doing business in this state shall contain the words Registered Limited
22 Liability Partnership or the abbreviation L.L.P. or LLP, or such other
23 similar words or abbreviation as may be required or authorized by the laws of
24 the state where the partnership is registered, as the last words or letters
25 of its name.

26

27 4-42-706. Limited Partnerships as Registered Limited Liability Limited
28 Partnerships.

29 A domestic limited partnership may become a registered limited
30 liability limited partnership by complying with the applicable provisions of
31 the Arkansas Revised Limited Partnership Act of 1991, §§ 4-43-101 et seq."

32

33 SECTION 13. Chapter 42 of Title 4 is amended by adding a new
34 subchapter to the end thereof to read as follows:

35 "4-42-801. Conversion of partnership to limited liability company.

1 (a) A partnership may be converted to a limited liability company
2 pursuant to this section.

3 (b) The terms and conditions of a conversion of a partnership to a
4 limited liability company must be approved by all of the partners or by a
5 number or percentage of the partners specified for conversion in the
6 partnership agreement.

7 (c) An agreement of conversion must set forth the terms and conditions
8 of the conversion of the interest of partners of a partnership into interests
9 in the converted limited liability company or the cash or other consideration
10 to be paid or delivered as a result of the conversion of the interests of the
11 partners, or a combination thereof.

12 (d) After a conversion is approved under subsection (b), the
13 partnership shall file articles of organization in the office of the
14 Secretary of State which satisfy the requirements of §4-32-202 and include:

15 (1) A statement that the partnership was converted to a limited
16 liability company from a partnership;

17 (2) Its former name; and

18 (3) A statement of the number of votes cast by the partners
19 entitled to vote for and against the conversion and, if the vote is less than
20 unanimous, the number or percentage required to approve the conversion under
21 subsection (b).

22 (e) A conversion takes effect when the articles of organization are
23 filed in the office of the Secretary of State or at any later date specified
24 in the articles of organization.

25 (f) A general partner who becomes a member of a limited liability
26 company as a result of a conversion remains liable as a partner for any
27 obligation incurred by the partnership before the conversion takes effect.

28 (g) A partner's liability for all obligations of the limited liability
29 company incurred after the conversion takes effect is that of a member of a
30 limited liability company.

31

32 4-42-802. Effect of conversion; entity unchanged.

33 (a) A partnership that has been converted to a limited liability
34 company is for all purposes, except for any differences caused by being
35 governed under the limited liability company statutes, the same entity that

1 existed before the conversion.

2 (b) When a conversion takes effect:

3 (1) All property owned by the converting partnership is vested
4 in the limited liability company;

5 (2) All debts, liabilities, and other obligations of the
6 converting partnership continue as obligations of the limited liability
7 company;

8 (3) An action or proceeding pending by or against the converting
9 partnership may be continued as if the conversion had not occurred;

10 (4) Except as prohibited by other law, all the rights,
11 privileges, immunities, powers, and purposes of the converting partnership
12 are vested in the limited liability company, and;

13 (5) Except as otherwise provided in the agreement of conversion
14 under §4-42-801(c), all of the partners of the converting partnership
15 continue as members of the limited liability company.

16

17 4-42-803. Merger or consolidation.

18 (a) Unless otherwise provided in writing in a partnership agreement,
19 and subject to any law applicable to business entities other than
20 partnerships, one (1) or more partnerships may merge or consolidate with or
21 into one (1) or more other business entities with the partnership or other
22 business entity as the merger or consolidation agreement shall provide being
23 the surviving or resulting partnership or other business entity.

24 (b) Rights or securities of or interests in a business entity that is
25 a party to the merger or consolidation may be exchanged for or converted into
26 cash, property, obligations, rights or securities of or interests in the
27 surviving or resulting business entity or of any other business entity.

28 (c) As used in this subchapter, _business entity_ or _business
29 entities_ shall mean domestic and foreign limited liability companies.

30

31 4-42-804. Approval of merger or consolidation.

32 (a) Unless otherwise provided in writing in a partnership agreement, a
33 partnership that is a party to a proposed merger or consolidation shall
34 approve the merger or consolidation agreement by the consent of all of the
35 partners.

1 (b) Each business entity that is a party to a proposed merger or
2 consolidation shall approve the merger or consolidation in the manner and by
3 the vote required by the laws applicable to such business entity.

4 (c) Each business entity that is a party to the merger or
5 consolidation shall have such rights to abandon the merger as are provided
6 for in the merger or consolidation agreement or in the laws applicable to the
7 business entity.

8

9 4-42-805. Articles of merger or consolidation.

10 (a) The business entity surviving or resulting from the merger or
11 consolidation shall deliver to the Secretary of State articles of merger or
12 consolidation executed by each constituent entity setting forth:

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

15 (2) That an agreement of merger or consolidation has been
16 approved and executed by each business entity which is a party to the merger
17 or consolidation;

18 (3) The name of the surviving or resulting entity;

19 (4) The future effective date of the merger or consolidation
20 (which shall be a date or time certain) if it is not to be effective upon the
21 filing of the articles of merger or consolidation;

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

25 (6) That a copy of the agreement of merger or consolidation will
26 be furnished by the surviving or resulting business entity, on request and
27 without cost, to any person holding an interest in any business entity which
28 is to merge or consolidate; and

29 (7) If the surviving or resulting entity is not a business
30 entity organized under the laws of this state, a statement that such
31 surviving or resulting business entity:

32 (i) Agrees that it may be served with process in this
33 state in any proceeding for enforcement of any obligation of any business
34 entity party to the merger or consolidation that was organized under the laws
35 of this state, as well as for enforcement of any obligation of the surviving

1 business entity or the new business entity arising from the merger or
2 consolidation; and

3 (ii) Appoints the Secretary of State as its agent for
4 service of process in any such proceeding, and the surviving business entity
5 shall specify the address to which a copy of the process shall be mailed to
6 it by the Secretary of State.

7 (b) A merger or consolidation takes effect upon the later of the
8 effective date of the filing of the articles of merger or consolidation or
9 the date set forth in the articles of merger or consolidation.

10 (c) The articles of merger or consolidation shall be executed by a
11 partnership that is a party to the merger or consolidation, and be filed with
12 the Secretary of State, in the manner provided for by the law applicable to
13 the other business entity to the merger or consolidation.

14 (d) An agreement of merger or consolidation approved in accordance
15 with §4-42-804 may effect any amendment to a partnership agreement or effect
16 the adoption of a new partnership agreement for a partnership if it is the
17 surviving or resulting entity in the merger or consolidation. An approved
18 agreement of merger or consolidation may also provide that the partnership
19 agreement of any constituent partnership to the merger or consolidation
20 (including a partnership formed for the purpose of consummating a merger or
21 consolidation) shall be the agreement of the surviving or resulting entity.
22 Any amendment to a partnership agreement or adoption of a new agreement made
23 pursuant to this subsection (d) shall be effective at the time or date of the
24 merger or consolidation. The provisions of this subsection shall not be
25 construed to limit the accomplishment of a merger or of any of the matters
26 referred to herein by any other means provided for in a partnership agreement
27 or other agreement or as otherwise permitted by law.

28

29 4-42-806. Effects of merger or consolidation.

30 A merger or consolidation has the following effects:

31 (a) The business entities that are parties to the merger or
32 consolidation agreement shall become a single entity, which, in the case of a
33 merger, shall be the entity designated in the plan of merger as the surviving
34 entity, and, in the case of a consolidation, shall be the new entity provided
35 for in the plan of consolidation;

1 (b) Each party to the merger or consolidation agreement, except the
2 surviving entity or the new entity, shall cease to exist;

3 (c) The surviving entity or the new entity shall thereupon and
4 thereafter possess all the rights, privileges, immunities, and powers of each
5 constituent entity and shall be subject to all the restrictions, disabilities
6 and duties of each of the constituent entities to the extent such rights,
7 privileges, immunities, powers, franchises, restrictions, disabilities and
8 duties are applicable to the type of business entity that is the surviving
9 entity or the new entity;

10 (d) All property, real, personal and mixed, and all debts due
11 on whatever account, including promises to make capital contributions and
12 subscriptions for shares, and all other choses in action, and all and every
13 other interest of or belonging to or due to each of the constituent entities
14 shall be vested in the surviving entity or the new entity without further act
15 or deed;

16 (e) The title to all real estate and any interest therein vested in
17 any such constituent entity shall not revert or be in any way impaired by
18 reason of such merger or consolidation;

19 (f) The surviving entity of the new entity shall thenceforth be liable
20 for all liabilities of each of the constituent entities so merged or
21 consolidated, and any claim existing or action or proceeding pending by or
22 against any such constituent entity may be prosecuted as if such merger or
23 consolidation had not taken place, or the surviving entity or the new entity
24 may be substituted in the action;

25 (g) Neither the rights of the creditors nor any liens on the property
26 of any constituent entity shall be impaired by the merger or consolidation;

27 (h) The interests in a partnership that are to be converted or
28 exchanged into interests, shares or other securities, cash, obligations or
29 other property under the terms of the merger or consolidation agreement are so
30 converted, and the former holders thereof are entitled only to the rights
31 provided in the merger or consolidation agreement or the rights otherwise
32 provided by law."

33

34 SECTION 14. Arkansas Code §4-43-101 is amended to read as follows:

35 "§4-43-101. Definitions.

1 As used in this chapter, unless the context otherwise requires:

2 (1) Certificate of limited partnership means the certificate
3 referred to in §4-43-201, and the certificate as amended or restated;

4 (2) Contribution means any cash, property, services rendered, or a
5 promissory note or other binding obligation to contribute cash or property or
6 to perform services which a partner contributes to a limited partnership in
7 his capacity as a partner;

8 (3) Event of withdrawal of a general partner means an event that
9 causes a person to cease to be a general partner as provided in §4-43-402;

10 (4) Foreign limited partnership means a partnership formed under the
11 laws of any state other than this state and having as partners one (1) or
12 more general partners and one (1) or more limited partners;

13 (5) General partner means a person who has been admitted to a
14 limited partnership as a general partner in accordance with the partnership
15 agreement and named in the certificate of limited partnership as a general
16 partner;

17 (6) Limited partner means a person who has been admitted to a
18 limited partnership as a limited partner in accordance with the partnership
19 agreement;

20 (7) Limited partnership and domestic limited partnership mean a
21 partnership formed by two (2) or more persons under the laws of this state
22 and having one (1) or more general partners and one (1) or more limited
23 partners;

24 (8) Partner means a limited or general partner;

25 (9) Partnership agreement means any agreement, written or oral, of
26 the partners as to the affairs of a limited partnership and the conduct of
27 its business;

28 (10) Partnership interest means a partner's share of the profits and
29 losses of a limited partnership and the right to receive distributions of
30 partnership assets;

31 (11) Person means a natural person, partnership, limited partnership
32 (domestic or foreign), trust, estate, association, or corporation;

33 (12) State means a state, territory, or possession of the United
34 States, the District of Columbia, or the Commonwealth of Puerto Rico.

35 (13) Registered limited liability limited partnership means a

1 partnership formed pursuant to the laws of this state and registered pursuant
2 to §4-43-1110 and § 4-42-703."

3

4 SECTION 15. Subchapter 11 of Chapter 43 of Title 4 of the Arkansas
5 Code is amended by adding a new section to read as follows:

6 "4-43-1110. Limited partnerships as registered limited liability
7 limited partnerships.

8 (1) To become and continue as a registered limited liability limited
9 partnership, a limited partnership shall, in addition to complying with the
10 requirements of this chapter:

11 (a) File an application as provided in § 4-42-703 of the
12 Arkansas Uniform Partnership Act, as permitted by the limited partnership_s
13 partnership agreement or, if the limited partnership_s partnership agreement
14 does not provide for the limited partnership_s becoming a registered limited
15 liability limited partnership, with the approval (i) by all general partners,
16 and (ii) by the limited partners or, if there is more than one class or group
17 of limited partners, by each class or group of limited partners, and in
18 either case, by limited partners who own more than fifty percent (50%) of the
19 then current percentage or other interest in the profits of the limited
20 partnership owned by all of the limited partners or by the limited partners
21 in each class or group, as appropriate; and

22 (b) Have as the last words or letters of its name the words
23 Registered Limited Liability Limited Partnership, or the abbreviation
24 L.L.L.P. or LLLP, and the word Limited may be abbreviated as Ltd.

25 (2) In applying §4-42-703 of the Arkansas Uniform Partnership Act to a
26 limited partnership:

27 (a) An application to become a registered limited liability
28 limited partnership, or a withdrawal notice, shall be executed by at least
29 one general partner of the limited partnership;

30 (b) All references to partners mean general partners only; and

31 (c) With respect to the initial filing of a certificate of
32 limited partnership by a limited partnership which also files an application
33 as provided in § 4-42-703 to become a registered limited liability limited
34 partnership, there shall only be one filing fee, which shall equal the
35 greater of the filing fee under this chapter or the filing fee provided in §

1 4-42-703.

2 (3) If a limited partnership is a registered limited liability limited
3 partnership, its partners who are liable for the debts, liabilities and other
4 obligations of the limited partnership shall have the limitation on liability
5 afforded to partners of registered limited liability partnerships under §§ 4-
6 42-307 and 4-42-310 of the Arkansas Uniform Partnership Act."

7

8 SECTION 16. Chapter 43, Title 4 of Arkansas Code is amended by adding
9 a new subchapter 12 to read as follows:

10 "4-43-1201. Conversion of limited partnership to limited liability
11 company.

12 (a) A limited partnership may be converted to a limited liability
13 company pursuant to this section.

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

18 (c) An agreement of conversion must set forth the terms and conditions
19 of the conversion of the interests of partners of a limited partnership into
20 interests in the converted limited liability company or the cash or other
21 consideration to be paid or delivered as a result of the conversion of the
22 interests of the partners, or a combination thereof.

23 (d) After a conversion is approved under subsection (b), the limited
24 partnership shall file articles of organization in the office of the
25 Secretary of State which satisfy the requirements of §4-32-202 and include:

26 (1) A statement that the limited partnership was converted to a
27 limited liability company from a limited partnership;

28 (2) Its former name;

29 (3) A statement of the number of votes cast by the partners
30 entitled to vote for and against the conversion and, if the vote is less than
31 unanimous, the number or percentage required to approve the conversion under
32 subsection (b); and

33 (4) A statement that the certificate of limited partnership is
34 canceled.

35 (e) The filing of articles of organization under subsection (d)

1 cancels the certificate of limited partnership as of the date on which the
2 conversion takes effect.

3 (f) A conversion takes effect when the articles of organization are
4 filed in the office of the Secretary of State or at any later date specified
5 in the articles of organization.

6 (g) A general partner who becomes a member of a limited liability
7 company as a result of a conversion remains liable as a partner for any
8 obligation incurred by the limited partnership before the conversion takes
9 effect.

10 (h) A partner's liability for all obligations of the limited liability
11 company incurred after the conversion takes effect is that of a member of a
12 limited liability company. A limited partner who becomes a member as a
13 result of a conversion remains liable only to the extent the limited partner
14 was liable for an obligation incurred by the limited partnership before the
15 conversion takes effect.

16

17 4-43-1202. Effect of conversion; entity unchanged.

18 (a) A limited partnership that has been converted to a limited
19 liability company is for all purposes, except for any differences caused by
20 being governed under the limited liability company statutes, the same entity
21 that existed before the conversion.

22 (b) When a conversion takes effect:

23 (1) All property owned by the converting limited partnership is
24 vested in the limited liability company;

25 (2) All debts, liabilities, and other obligations of the
26 converting limited partnership continue as obligations of the limited
27 liability company;

28 (3) An action or proceeding pending by or against the converting
29 limited partnership may be continued as if the conversion had not occurred;

30 (4) Except as prohibited by other law, all the rights,
31 privileges, immunities, powers, and purposes of the converting limited
32 partnership are vested in the limited liability company; and

33 (5) Except as otherwise provided in the agreement of conversion
34 under §4-43-1201(c), all of the partners of the converting limited
35 partnership continue as members of the limited liability company.

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4-43-1203. Merger or consolidation.

(a) Unless otherwise provided in writing in a partnership agreement, and subject to any law applicable to business entities other than limited partnerships, one (1) or more limited partnerships may merge or consolidate with or into one (1) or more other business entities with the limited partnership or other business entity as the merger or consolidation agreement shall provide being the surviving or resulting limited partnership or other business entity.

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

(c) As used in this subchapter, business entity or business entities shall mean domestic and foreign limited liability companies.

4-43-1204. Approval of merger or consolidation.

(a) Unless otherwise provided in writing in a partnership agreement, a limited partnership that is a party to a proposed merger or consolidation shall approve the merger or consolidation agreement by the consent of all of the partners.

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

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

4-43-1205. Articles of merger or consolidation.

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

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

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

4 (3) The name of the surviving or resulting entity;

5 (4) The future effective date of the merger or consolidation
6 (which shall be a date or time certain) if it is not to be effective upon the
7 filing of the articles of merger or consolidation;

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

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

15 (7) If the surviving or resulting entity is not a business
16 entity organized under the laws of this state, a statement that such
17 surviving or resulting business entity:

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

24 (ii) Appoints the Secretary of State as its agent for
25 service of process in any such proceeding, and the surviving business entity
26 shall specify the address to which a copy of the process shall be mailed to
27 it by the Secretary of State.

28 (b) A merger or consolidation takes effect upon the later of the
29 effective date of the filing of the articles of merger or consolidation or
30 the date set forth in the articles of merger or consolidation.

31 (c) The articles of merger or consolidation shall be executed by a
32 limited partnership that is a party to the merger or consolidation in the
33 manner provided for in §4-43-204, and shall be filed with the Secretary of
34 State in the manner provided for in §4-43-206.

35 (d) Articles of merger or consolidation shall constitute articles of

1 dissolution for a limited partnership which is not the surviving or resulting
2 business entity in the merger or consolidation.

3 (e) An agreement of merger or consolidation approved in accordance
4 with §4-43-1204 may effect any amendment to a partnership agreement or effect
5 the adoption of a new partnership agreement for a limited partnership if it
6 is the surviving or resulting entity in the merger or consolidation. An
7 approved agreement of merger or consolidation may also provide that the
8 partnership agreement of any constituent limited partnership to the merger or
9 consolidation (including a limited partnership formed for the purpose of
10 consummating a merger or consolidation) shall be the agreement of the
11 surviving or resulting entity. Any amendment to a partnership agreement or
12 adoption of a new agreement made pursuant to this subsection (e) shall be
13 effective at the time or date of the merger or consolidation. The provisions
14 of this subsection shall not be construed to limit the accomplishment of a
15 merger or of any of the matters referred to herein by any other means
16 provided for in a partnership agreement or other agreement or as otherwise
17 permitted by law.

18

19 4-43-1206. Effects of merger or consolidation.

20 A merger or consolidation has the following effects:

21 (a) The business entities that are parties to the merger or
22 consolidation agreement shall become a single entity, which, in the case of a
23 merger, shall be the entity designated in the plan of merger as the surviving
24 entity, and, in the case of a consolidation, shall be the new entity provided
25 for in the plan of consolidation;

26 (b) Each party to the merger or consolidation agreement, except the
27 surviving entity or the new entity, shall cease to exist;

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

35 (d) All property, real, personal and mixed, and all debts due

1 on whatever account, including promises to make capital contributions and
2 subscriptions for shares, and all other choses in action, and all and every
3 other interest of or belonging to or due to each of the constituent entities
4 shall be vested in the surviving entity or the new entity without further act
5 or deed;

6 (e) The title to all real estate and any interest therein vested in
7 any such constituent entity shall not revert or be in any way impaired by
8 reason of such merger or consolidation;

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

15 (g) Neither the rights of the creditors nor any liens on the property
16 of any constituent entity shall be impaired by the merger or consolidations;

17 (h) The interests in a limited partnership that are to be converted or
18 exchanged into interests, shares or other securities, cash, obligations or
19 other property under the terms of the merger or consolidation agreement are so
20 converted, and the former holders thereof are entitled only to the rights
21 provided in the merger or consolidation agreement or the rights otherwise
22 provided by law."

23

24 SECTION 17. Arkansas Code §4-32-401 is hereby amended to read as
25 follows:

26 "4-32-401. Management.

27 (a) With respect to persons other than members, management of the
28 affairs of the limited liability company shall be governed by § 4-32-301.

29 (b) Unless otherwise provided in an operating agreement, with respect
30 to members, management of the affairs of the limited liability company shall
31 be governed by § 4-32-301.

32 (c) Unless otherwise provided in an operating agreement, managers:

33 (1) Shall be designated, appointed, elected, removed or replaced
34 by a vote, approval or consent of more than one half (1/2) by number of the
35 members;

1 (2) Need not be members of the limited liability company or
2 natural persons; and

3 (3) Unless they are sooner removed or sooner resign, shall hold
4 office until their successors shall have been elected and qualified."
5

6 SECTION 18. Arkansas Code §4-70-201 is amended to read as follows:

7 "§4-70-201. Applicability of subchapter.

8 (a) This subchapter shall not apply to any limited partnership which
9 has filed its certificate of limited partnership with the Secretary of State
10 pursuant to §4-44-102 [Repealed].

11 (b) This subchapter shall not apply to any domestic or foreign
12 corporation lawfully doing business in this state.

13 (c) This subchapter shall not apply to any limited partnership which
14 has filed its certificate of limited partnership with the Secretary of State
15 pursuant to §4-43-201.

16 (d) This subchapter shall not apply to any limited liability company
17 which has filed its articles of organization with the Secretary of State
18 pursuant to §4-32-202."
19

20 SECTION 19. Arkansas Code §26-54-102 is amended to read as follows:

21 "§26-54-102. Definitions.

22 As used in this chapter, unless the context otherwise requires,
23 corporation means any corporation, domestic and foreign, active and
24 inactive, which is organized in or qualified under the laws of the State of
25 Arkansas and includes, but is not limited to, any person or group of persons,
26 any association, joint-stock company, business trust, or other organizations
27 with or without charter constituting a separate legal entity of relationship
28 with the purpose of obtaining some corporate privilege or franchise which is
29 not allowed to them as individuals and which is exercising, or attempting to
30 exercise, corporate-type acts, whether or not existing by virtue of a
31 particular statute. However, this definition does not include nonprofit
32 corporations, corporations which are organizations exempt from the federal
33 income tax, or organizations formed pursuant to the Uniform Partnership Act,
34 §4-42-101 et seq."
35

1 SECTION 20. Arkansas Code §11-9-102 is amended to read as follows:

2 "§11-9-102. Definitions.

3 As used in this chapter, unless the context otherwise requires:

4 (1) Carrier means any stock company, mutual company, or reciprocal
5 or interinsurance exchange authorized to write or carry on the business of
6 workers' compensation insurance in this state; whenever required by the
7 context, the term carrier shall be deemed to include duly qualified
8 self-insureds or self-insured groups;

9 (2) Child means a natural child, a posthumous child, a child legally
10 adopted prior to injury of the employee, a stepchild, an acknowledged
11 illegitimate child of the deceased or of the spouse of the deceased, and a
12 foster child;

13 (3) Commission means the Workers' Compensation Commission;

14 (4) Insurance Commissioner means the Insurance Commissioner of the
15 State of Arkansas;

16 (5)(A) Compensable injury means:

17 (i) An accidental injury causing internal or external
18 physical harm to the body or accidental injury to prosthetic appliances,
19 including eyeglasses, contact lenses, or hearing aids, arising out of and in
20 the course of employment and which requires medical services or results in
21 disability or death. An injury is accidental only if it is caused by a
22 specific incident and is identifiable by time and place of occurrence;

23 (ii) An injury causing internal or external physical harm
24 to the body and arising out of and in the course of employment if it is not
25 caused by a specific incident or is not identifiable by time and place of
26 occurrence, if the injury is:

27 (a) Caused by rapid repetitive motion. Carpal
28 tunnel syndrome is specifically categorized as a compensable injury falling
29 within this definition;

30 (b) A back injury which is not caused by a specific
31 incident or which is not identifiable by time and place of occurrence;

32 (c) Hearing loss which is not caused by a specific
33 incident or which is not identifiable by time and place of occurrence;

34 (iii) Mental illness as set out in §11-9-113;

35 (iv) Heart, cardiovascular injury, accident, or disease as

1 set out in §11-9-114;

2 (v) A hernia as set out in §11-9-523.

3 (B) Compensable injury does not include:

4 (i) Injury to any active participant in assaults or
5 combats which, although they may occur in the workplace, are the result of
6 nonemployment-related hostility or animus of one, both, or all of the
7 combatants, and which said assault or combat amounts to a deviation from
8 customary duties; further, except for innocent victims, injuries caused by
9 horseplay shall not be considered to be compensable injuries;

10 (ii) Injury incurred while engaging in or performing, or
11 as the result of engaging in or performing, any recreational or social
12 activities for the employee's personal pleasure;

13 (iii) Injury which was inflicted upon the employee at a
14 time when employment services were not being performed, or before the
15 employee was hired or after the employment relationship was terminated;

16 (iv) Injury where the accident was substantially
17 occasioned by the use of alcohol, illegal drugs, or prescription drugs used
18 in contravention of physician's orders. The presence of alcohol, illegal
19 drugs, or prescription drugs used in contravention of a physician's orders
20 shall create a rebuttable presumption that the injury or accident was
21 substantially occasioned by the use of alcohol, illegal drugs, or
22 prescription drugs used in contravention of physician's orders. Every
23 employee is deemed by his performance of services to have impliedly consented
24 to reasonable and responsible testing by properly trained medical or law
25 enforcement personnel for the presence of any of the aforementioned
26 substances in the employee's body. An employee shall not be entitled to
27 compensation unless it is proved by a preponderance of the evidence that the
28 alcohol, illegal drugs, or prescription drugs utilized in contravention of
29 the physician's orders did not substantially occasion the injury or accident.

30 (C) The definition of compensable injury as set forth
31 hereinabove shall not be deemed to limit or abrogate the right to recover for
32 mental injuries as set forth in §11-9-113 or occupational diseases as
33 hereinafter set forth in §11-9-601 et seq.

34 (D) A compensable injury must be established by medical
35 evidence, supported by objective findings as defined in §11-9-102(16).

1 (E) Burden of proof. The burden of proof of a compensable injury
2 shall be on the employee and shall be as follows:

3 (i) For injuries falling within the definition of
4 compensable injury under subdivision (5)(A)(i) of this section, the burden of
5 proof shall be a preponderance of the evidence;

6 (ii) For injuries falling within the definition of
7 compensable injury under subdivision (5)(A)(ii) of this section, the burden
8 of proof shall be by a preponderance of the evidence, and the resultant
9 condition is compensable only if the alleged compensable injury is the major
10 cause of the disability or need for treatment.

11 (F) Benefits.

12 (i) When an employee is determined to have a compensable
13 injury, the employee is entitled to medical and temporary disability as
14 provided by this chapter.

15 (ii) Permanent benefits shall be awarded only upon a
16 determination that the compensable injury was the major cause of the
17 disability or impairment. If any compensable injury combines with a
18 preexisting disease or condition or the natural process of aging to cause or
19 prolong disability or a need for treatment, permanent benefits shall be
20 payable for the resultant condition only if the compensable injury is the
21 major cause of the permanent disability or need for treatment.

22 (iii) Under subdivision (5)(F) of this section, benefits
23 shall not be payable for a condition which results from a nonwork-related
24 independent intervening cause following a compensable injury which causes or
25 prolongs disability or a need for treatment. A nonwork-related independent
26 intervening cause does not require negligence or recklessness on the part of
27 a claimant.

28 (iv) Nothing in this section shall limit the payment of
29 rehabilitation benefits or benefits for disfigurement as set forth in this
30 chapter;

31 (6) Compensation means the money allowance payable to the employee
32 or to his dependents and includes the allowances provided for in §11-9-509
33 and funeral expense;

34 (7) Death means only death resulting from compensable injury as
35 defined in subdivision (5) of this section;

1 (8) Department means the State Insurance Department;

2 (9) Disability means incapacity because of compensable injury to
3 earn, in the same or any other employment, the wages which the employee was
4 receiving at the time of the compensable injury;

5 (10) Employee means any person, including a minor, whether lawfully
6 or unlawfully employed in the service of an employer under any contract of
7 hire or apprenticeship, written or oral, expressed or implied; but excluding
8 one whose employment is casual and not in the course of the trade, business,
9 profession, or occupation of his employer, and excluding one who is required
10 to perform work for a municipality, county, or the state or federal
11 government upon being convicted of a criminal offense or while incarcerated.

12 The term employee shall also include a sole proprietor, a partner or a
13 member who devotes full time to the proprietorship, partnership or limited
14 liability company. Further, however, it is to be understood that any sole
15 proprietor, partner of a partnership or member of a limited liability company
16 who desires not to be included in the definition of employee may file for and
17 receive a certification of noncoverage under this chapter from the commission
18 and thereafter, or until he elects otherwise, be conclusively presumed not to
19 be an employee for purposes of this chapter. No election by a sole
20 proprietor, partnership, or limited liability company under this subdivision
21 shall affect the rights or the coverage under this chapter of any employees
22 of those sole proprietors, partners or members. Any reference to an employee
23 who has been injured, when that employee is dead, shall also include his
24 legal representative, dependents, and other persons to whom compensation may
25 be payable;

26 (11) Employer means any individual, partnership, limited liability
27 company, association, or corporation carrying on any employment, the receiver
28 or trustee of the same, or the legal representative of a deceased employer;

29 (12) Employment means:

30 (A) Every employment in the state in which three (3) or more
31 employees are regularly employed by the same employer in the course of
32 business, except:

33 (i) An employee employed as a domestic servant in or about
34 a private home;

35 (ii) An employee employed to do gardening, maintenance,

1 repair, remodeling, or similar work in or about the private home of the
2 person employing the employee;

3 (iii) Agricultural farm labor;

4 (iv) The State of Arkansas and each of the political
5 subdivisions thereof, except as provided by §§6-17-1401 - 6-17-1405,
6 14-26-101 - 14-26-104, 14-60-101 - 14-60-104, 19-10-101 - 19-10-103,
7 19-10-202 - 19-10-210, 19-10-401 - 19-10-406, and 21-5-601 - 21-5-610;

8 (v) A person for whom a rule of liability for injury or
9 death arising out of and in the course of employment is provided by the laws
10 of the United States;

11 (vi) A person performing services for any nonprofit
12 religious, charitable, or relief organization;

13 (vii) Any person engaged in the vending, selling, offering
14 for sale, or delivery directly to the general public of any newspapers,
15 magazines, or periodicals, or any person acting as sales agent or distributor
16 as an independent contractor of or for any newspaper, magazine, or
17 periodical;

(B) Every employment in which two (2) or more
18 employees are employed by any person engaged in building or building repair
19 work;

(C) Every employment in which one (1) or more employees are
20 employed by a contractor who subcontracts any part of his contract;

(D) Every employment in which one (1) or more employees are
21 employed by a subcontractor;

22 (13) Healing period means that period for healing of an injury
23 resulting from an accident;

24 (14) Major cause means more than fifty percent (50%) of the cause. A
25 finding of major cause shall be established according to the preponderance of
26 the evidence;

27 (15) Medical services means those services specified in §11-9-508;

28 (16) Objective findings are those findings which cannot come under
29 the voluntary control of the patient. When determining physical or
30 anatomical impairment, neither a physician, any other medical provider, an
31 administrative law judge, the Workers' Compensation Commission, nor the
32 courts may consider complaints of pain; for the purpose of making physical or
33 anatomical impairment ratings to the spine, straight-leg raising tests or
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1 range-of-motion tests shall not be considered objective findings. Medical
2 opinions addressing compensability and permanent impairment must be stated
3 within a reasonable degree of medical certainty;

4 (17) State average weekly wage means the state average weekly wage
5 determined annually by the Director of the Department of Labor in the
6 preceding calendar year, pursuant to §11-10-502. If, for any reason, the
7 determination is not available, the commission shall determine the wage
8 annually, after reasonable investigation and public hearing;

9 (18) Time of accident or date of accident means the time or date
10 of the occurrence of the accidental incident from which compensable injury,
11 disability, or death results;

12 (19) Wages means the money rate at which the service rendered is
13 recompensed under the contract of hiring in force at the time of the
14 accident, including reasonable value of board, rent, housing, lodging, or
15 similar advantage received from the employer, and includes the amount of tips
16 required to be reported by the employer pursuant to Section 6053 of the
17 Internal Revenue Code of 1954, as amended, and the regulations promulgated
18 pursuant thereto, or the amount of actual tips reported, whichever amount is
19 greater;

20 (20) Widow shall include only the decedent's legal wife, living with
21 or dependent for support upon him at the time of his death;

22 (21) Widower shall include only the decedent's legal husband, living
23 with or dependent for support upon her at the time of her death."

24

25 *SECTION 21. Arkansas Code 26-54-104(a) is amended to read as follows:*

26 *"(a) Every corporation shall file an annual franchise tax report and*
27 *pay an annual franchise tax, unless exempted under § 26-54-105, as follows:*

28 *(1) Each life, fire, accident, surety, liability, steam boiler,*
29 *tornado, health, or other kind of insurance company of whatever nature,*
30 *having an outstanding capital stock of less than five hundred thousand*
31 *dollars (\$500,000) shall pay one hundred dollars (\$100). Each such company*
32 *having an outstanding capital stock of five hundred thousand dollars*
33 *(\$500,000) or more shall pay two hundred dollars (\$200);*

34 *(2) Each legal reserve mutual insurance corporation having*
35 *assets of less than one hundred million dollars (\$100,000,000) shall pay one*

1 hundred dollars (\$100). Each such corporation having assets of one hundred
2 million dollars (\$100,000,000) or more shall pay two hundred dollars (\$200);

3 (3) Each mutual assessment insurance corporation shall pay one
4 hundred dollars (\$100);

5 (4) Each mortgage loan corporation shall pay an amount
6 equivalent to twenty-seven one-hundredths of one percent (0.27%) of that
7 proportion of the par value of its outstanding capital stock that its
8 aggregate outstanding loans made in the State of Arkansas bears to the total
9 aggregate outstanding loans made in all states. No corporation shall pay an
10 annual tax of less than one hundred dollars (\$100) nor more than one million
11 seventy-five thousand dollars (\$1,075,000);

12 (5) Each corporation, other than those in subdivisions (2)-(4)
13 of this section, without authorized capital stock shall pay one hundred
14 dollars (\$100);

15 (6) Each corporation, other than those in subdivisions (1)-(5)
16 of this section, shall pay an amount equivalent to twenty-seven
17 one-hundredths of one percent (0.27%) of that proportion of the par value of
18 its outstanding capital stock that the value of its real and personal
19 property in the State of Arkansas bears to the total value of the real and
20 personal property of the corporation. No corporation shall pay an annual tax
21 of less than fifty dollars (\$50.00) nor more than one million seventy-five
22 thousand dollars (\$1,075,000);

(7) Each corporation, actually and
23 actively in the process of liquidation and which does not rent or lease its
24 property but which retains its corporate charter or authority for the sole
25 purpose of winding up its affairs, shall pay an annual tax as provided in
26 subdivision (6) of this section or an amount equivalent to twenty-seven
27 one-hundredths of one percent (0.27%) of the value of its real and tangible
28 personal property in Arkansas, whichever is smaller, but in no instance shall
29 the tax be less than fifty dollars (\$50.00) nor more than one million
30 seventy-five thousand dollars (\$1,075,000);

31 (8) Organizations formed pursuant to the Small Business Entity
32 Pass Through Act, § 4-32-101 et seq., shall pay the minimum franchise tax."

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34 SECTION 22. All provisions of this act of a general and permanent
35 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas

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