

Stricken language would be deleted from present law. Underlined language would be added to present law.

1 State of Arkansas
2 81st General Assembly
3 Regular Session, 1997
4

As Engrossed: S2/10/97 S2/12/97 H2/27/97

A Bill

SENATE BILL 274

5 By: Senator Mahony
6 By: Representative Courtway
7

For An Act To Be Entitled

9 "AN ACT TO AMEND THE SMALL BUSINESS ENTITY TAX PASS
10 THROUGH ACT AND OTHER ACTS RELATING TO PASS THROUGH
11 ENTITIES, TO ALLOW CONVERSIONS, MERGERS AND CONSOLIDATIONS
12 AND TO CLARIFY CERTAIN OTHER PROVISIONS OF THESE ACTS; AND
13 FOR OTHER PURPOSES."
14
15

Subtitle

17 "TO ALLOW CONVERSIONS, MERGERS AND
18 CONSOLIDATIONS AMONG PASS THROUGH
19 ENTITIES AND TO CLARIFY CERTAIN
20 PROVISIONS OF THE ACTS RELATING TO PASS
21 THROUGH ENTITIES."
22

23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
24

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

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

29 ~~_____ (1) The written consent of the holder of a reserved or registered~~
30 ~~name to use a deceptively similar name if one or more words are added,~~
31 ~~altered, or deleted to make the name distinguishable from the reserved or~~
32 ~~registered name; or~~

33 ~~_____ (2) A certified copy of a final decree of a court of competent~~
34 ~~jurisdiction establishing the prior right of the applicant to the use of the~~
35 ~~name in this state."~~
36

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

3 "(c) As used in this subchapter, business entity or business entities
4 shall mean domestic and foreign limited liability companies, ~~and corporations,~~
5 general partnerships, and limited partnerships."

6
7 SECTION 3. Subsection (b) of Arkansas Code §4-32-1202 is amended to
8 read as follows:

9 "(b) Each ~~corporation and foreign limited liability company~~ business
10 entity that is a party to a proposed merger or consolidation shall approve the
11 merger or consolidation in the manner and by the vote required by the laws
12 applicable to such business entity."

13

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

16 "4-42-801. Conversion of partnership to limited liability company.

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

19 (b) The terms and conditions of a conversion of a partnership to a
20 limited liability company must be approved by all of the partners or by a
21 number or percentage of the partners specified for conversion in the
22 partnership agreement.

23 (c) An agreement of conversion must set forth the terms and conditions
24 of the conversion of the interest of partners of a partnership into interests
25 in the converted limited liability company or the cash or other consideration
26 to be paid or delivered as a result of the conversion of the interests of the
27 partners, or a combination thereof.

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

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

33 (2) Its former name; and

34 (3) A statement of the number of votes cast by the partners
35 entitled to vote for and against the conversion and, if the vote is less than
36 unanimous, the number or percentage required to approve the conversion under

1 subsection (b).

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

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

8 (g) A partners liability for all obligations of the limited liability
9 company incurred after the conversion takes effect is that of a member of a
10 limited liability company.

11

12 4-42-802. Effect of conversion; entity unchanged.

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

17 (b) When a conversion takes effect:

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

20 (2) All debts, liabilities, and other obligations of the
21 converting partnership continue as obligations of the limited liability
22 company;

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

25 (4) Except as prohibited by other law, all the rights,
26 privileges, immunities, powers, and purposes of the converting partnership are
27 vested in the limited liability company, and

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

31

32 4-42-803. Merger or consolidation.

33 (a) Unless otherwise provided in writing in a partnership agreement,
34 and subject to any law applicable to business entities other than

35 partnerships, one (1) or more partnerships may merge or consolidate with or
36 into one (1) or more other business entities with the partnership or other

1 business entity as the merger or consolidation agreement shall provide being
2 the surviving or resulting partnership or other business entity.

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

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

9

10 4-42-804. Approval of merger or consolidation.

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

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

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

21

22 4-42-805. Articles of merger or consolidation.

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

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

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

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

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

35 (5) That the agreement of merger or consolidation is on file at a
36 place of business of the surviving or resulting entity, and the address of

1 that place of business;

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

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

9 (i) Agrees that it may be served with process in this state
10 in any proceeding for enforcement of any obligation of any business entity
11 party to the merger or consolidation that was organized under the laws of this
12 state, as well as for enforcement of any obligation of the surviving business
13 entity or the new business entity arising from the merger or consolidation;
14 and

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

19 (b) A merger or consolidation takes effect upon the later of the
20 effective date of the filing of the articles of merger or consolidation or the
21 date set forth in the articles of merger or consolidation.

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

26 (d) An agreement of merger or consolidation approved in accordance with
27 §4-42-804 may effect any amendment to a partnership agreement or effect the
28 adoption of a new partnership agreement for a partnership if it is the
29 surviving or resulting entity in the merger or consolidation. An approved
30 agreement of merger or consolidation may also provide that the partnership
31 agreement of any constituent partnership to the merger or consolidation
32 (including a partnership formed for the purpose of consummating a merger or
33 consolidation) shall be the agreement of the surviving or resulting entity.
34 Any amendment to a partnership agreement or adoption of a new agreement made
35 pursuant to this subsection (d) shall be effective at the time or date of the
36 merger or consolidation. The provisions of this subsection shall not be

1 construed to limit the accomplishment of a merger or of any of the matters
2 referred to herein by any other means provided for in a partnership agreement
3 or other agreement or as otherwise permitted by law.

4

5 4-42-806. Effects of merger or consolidation.

6 A merger or consolidation has the following effects:

7 (a) The business entities that are parties to the merger or
8 consolidation agreement shall become a single entity, which, in the case of a
9 merger, shall be the entity designated in the plan of merger as the surviving
10 entity, and, in the case of a consolidation, shall be the new entity provided
11 for in the plan of consolidation;

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

14 (c) The surviving entity or the new entity shall thereupon and
15 thereafter possess all the rights, privileges, immunities, and powers of each
16 constituent entity and shall be subject to all the restrictions, disabilities
17 and duties of each of the constituent entities to the extent such rights,
18 privileges, immunities, powers, franchises, restrictions, disabilities and
19 duties are applicable to the type of business entity that is the surviving
20 entity or the new entity;

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

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

30 (f) The surviving entity of the new entity shall thenceforth be liable
31 for all liabilities of each of the constituent entities so merged or
32 consolidated, and any claim existing or action or proceeding pending by or
33 against any such constituent entity may be prosecuted as if such merger or
34 consolidation had not taken place, or the surviving entity or the new entity
35 may be substituted in the action;

36 (g) Neither the rights of the creditors nor any liens on the property

1 of any constituent entity shall be impaired by the merger or consolidation;

2 (h) The interests in a partnership that are to be converted or
3 exchanged into interests, shares or other securities, cash, obligations or
4 other property under the terms of the merger or consolidation agreement are so
5 converted, and the former holders thereof are entitled only to the rights
6 provided in the merger or consolidation agreement or the rights otherwise
7 provided by law."

8

9 SECTION 5. Chapter 43, Title 4 of Arkansas Code is amended by adding a
10 new subchapter 12 to read as follows:

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

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

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

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

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

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

29 (2) Its former name;

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

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

36 (e) The filing of articles of organization under subsection (d) cancels

1 the certificate of limited partnership as of the date on which the conversion
2 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 partners 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 result
13 of a conversion remains liable only to the extent the limited partner was
14 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 partnership
35 continue as members of the limited liability company.

36

1 4-43-1203. Merger or consolidation.

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

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

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

15

16 4-43-1204. Approval of merger or consolidation.

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

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

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

27

28 4-43-1205. Articles of merger or consolidation.

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

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

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

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

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

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

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

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

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

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

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

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

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

35 (e) An agreement of merger or consolidation approved in accordance with
36 §4-43-1204 may effect any amendment to a partnership agreement or effect the

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

14

15 4-43-1206. Effects of merger or consolidation.

16 A merger or consolidation has the following effects:

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

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

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

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

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

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

10 (g) Neither the rights of the creditors nor any liens on the property
11 of any constituent entity shall be impaired by the merger or consolidations;
12 and

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

19

20 SECTION 6. Arkansas Code §4-32-401 is hereby amended to read as
21 follows:

22 "4-32-401. Management.

23 ~~(a) Unless the articles of organization indicate that management of the~~
24 ~~limited liability company is vested in a manager or managers, or unless an~~
25 ~~operating agreement vests management of the limited liability company in a~~
26 ~~manager or managers, management of the business or affairs of the limited~~
27 ~~liability company shall be vested in the members. Subject to any provisions~~
28 ~~in an operating agreement or this chapter restricting or enlarging the~~
29 ~~management rights and duties of any person or group or class of persons, the~~
30 ~~members shall have the right and authority to manage the affairs of the~~
31 ~~limited liability company and to make all decisions with respect thereto.~~
32 With respect to persons other than members, management of the affairs of the
33 limited liability company shall be governed by § 4-32-301.

34 ~~(b) If the articles of organization indicate that management of the~~
35 ~~limited liability company is vested in a manager or managers, or unless an~~
36 ~~operating agreement vests management of the limited liability company in one~~

1 ~~(1) or more managers, then the manager or managers shall have exclusive power~~
2 ~~to manage the business and affairs of the limited liability company except to~~
3 ~~the extent otherwise provided in an operating agreement.~~Unless otherwise
4 provided in an operating agreement, with respect to members, management of the
5 affairs of the limited liability company shall be governed by § 4-32-301.

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

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

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

12 (3) Unless they are sooner removed or sooner resign, shall hold
13 office until their successors shall have been elected and qualified."
14

15 SECTION 7. Arkansas Code §4-70-201 is amended to read as follows:

16 "§4-70-201. Applicability of subchapter.

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

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

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

25 (d) This subchapter shall not apply to any limited liability company
26 which has filed its articles of organization with the Secretary of State
27 pursuant to §4-32-202."
28

29 SECTION 8. Arkansas Code §11-9-102 is amended to read as follows:

30 "§11-9-102. Definitions.

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

32 (1) Carrier means any stock company, mutual company, or reciprocal or
33 interinsurance exchange authorized to write or carry on the business of
34 workers' compensation insurance in this state. Whenever required by the
35 context, the term carrier shall be deemed to include duly qualified
36 self-insureds or self-insured groups;

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

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

6 (4) Insurance Commissioner means the Insurance Commissioner of the
7 State of Arkansas;

8 (5)(A) Compensable injury means:

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

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

19 (a) Caused by rapid repetitive motion. Carpal tunnel
20 syndrome is specifically categorized as a compensable injury falling within
21 this definition;

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

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

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

27 (iv) Heart, cardiovascular injury, accident, or disease as
28 set out in §11-9-114;

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

30 (B) Compensable injury does not include:

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

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

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

7 (iv)(a) Injury where the accident was substantially
8 occasioned by the use of alcohol, illegal drugs, or prescription drugs used in
9 contravention of physician's orders.

10 (b) The presence of alcohol, illegal drugs, or
11 prescription drugs used in contravention of a physician's orders shall create
12 a rebuttable presumption that the injury or accident was substantially
13 occasioned by the use of alcohol, illegal drugs, or prescription drugs used in
14 contravention of physician's orders.

15 (c) Every employee is deemed by his performance of
16 services to have impliedly consented to reasonable and responsible testing by
17 properly trained medical or law enforcement personnel for the presence of any
18 of the aforementioned substances in the employee's body.

19 (d) An employee shall not be entitled to compensation
20 unless it is proved by a preponderance of the evidence that the alcohol,
21 illegal drugs, or prescription drugs utilized in contravention of the
22 physician's orders did not substantially occasion the injury or accident.

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

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

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

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

34 (ii) For injuries falling within the definition of
35 compensable injury under subdivision (5)(A)(ii) of this section, the burden of
36 proof shall be by a preponderance of the evidence, and the resultant condition

1 is compensable only if the alleged compensable injury is the major cause of
2 the disability or need for treatment.

3 (F) Benefits.

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

7 (ii)(a) Permanent benefits shall be awarded only upon a
8 determination that the compensable injury was the major cause of the
9 disability or impairment.

10 (b) If any compensable injury combines with a
11 preexisting disease or condition or the natural process of aging to cause or
12 prolong disability or a need for treatment, permanent benefits shall be
13 payable for the resultant condition only if the compensable injury is the
14 major cause of the permanent disability or need for treatment.

15 (iii) Under this subdivision (5)(F), benefits shall not be
16 payable for a condition which results from a nonwork-related independent
17 intervening cause following a compensable injury which causes or prolongs
18 disability or a need for treatment. A nonwork-related independent intervening
19 cause does not require negligence or recklessness on the part of a claimant.

20 (iv) Nothing in this section shall limit the payment of
21 rehabilitation benefits or benefits for disfigurement as set forth in this
22 chapter;

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

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

28 (8) Department means the State Insurance Department;

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

32 (10)(A) Employee means any person, including a minor, whether lawfully
33 or unlawfully employed in the service of an employer under any contract of
34 hire or apprenticeship, written or oral, expressed or implied; but excluding
35 one whose employment is casual and not in the course of the trade, business,
36 profession, or occupation of his employer, and excluding one who is required

1 to perform work for a municipality, county, or the state or federal government
2 upon being convicted of a criminal offence or while incarcerated.

3 (B) The term employee shall also include a sole proprietor,
4 partner or a ~~partner~~ member who devotes full time to the proprietorship, ~~or~~
5 partnership or limited liability company. However, any sole proprietor, ~~or~~
6 partner of a partnership or member of a limited liability company who desires
7 not to be included in the definition of employee may file for and receive a
8 certification of noncoverage under this chapter from the commission.

9 (C) The term employee shall not include any individual who is a
10 qualified real estate agent as that term is defined in § 3508 of the Internal
11 Revenue Code of 1986, as amended, and as may be amended, including all
12 regulations thereunder. A qualified real estate agent, as defined in the
13 preceding sentence, shall be entitled to file for and receive a certification
14 of noncoverage under this chapter from the commission.

15 (D) Any individual receiving a certification of noncoverage under
16 this chapter from the commission shall thereafter, or until he elects
17 otherwise, be conclusively presumed not to be an employee for purposes of this
18 chapter or otherwise.

19 (E) No election by a sole proprietor, ~~or~~ partnership or limited
20 liability company under this subdivision (10) shall affect the rights or the
21 coverage under this chapter of any employees of those sole proprietors, ~~or~~
22 partners or members.

23 (F) Any reference to an employee who has been injured, when that
24 employee is dead, shall also include his legal representative, dependents, and
25 other persons to whom compensation may 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,
36 repair, remodeling, or similar work in or about the private home of the person

1 employing the employee;

2 (iii) Agricultural farm labor;

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

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

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

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

16 (viii) Services performed by an individual if the
17 individual is a qualified real estate agent as that term is defined in
18 § 3508 of the Internal Revenue Code of 1986, as amended, and as may be
19 amended, including all regulations thereunder;

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

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

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

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

28 (14)(A) Major cause means more than fifty percent (50%) of the cause.

29 (B) A finding of major cause shall be established according to the
30 preponderance of the evidence;

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

32 (16)(A)(i) Objective findings are those findings which cannot come
33 under the voluntary control of the patient.

34 (ii) When determining physical or anatomical impairment, neither
35 a physician, any other medical provider, an administrative law judge, the
36 Workers' Compensation Commission, nor the courts may consider complaints of

1 pain; for the purpose of making physical or anatomical impairment ratings to
2 the spine, straight-leg-raising tests or range-of-motion tests shall not be
3 considered objective findings.

4 (B) Medical opinions addressing compensability and permanent
5 impairment must be stated within a reasonable degree of medical certainty;

6 (17)(A) State average weekly wage means the state average weekly wage
7 determined annually by the Director of the Department of Labor in the
8 preceding calendar year, pursuant to §11-10-502.

9 (B) If, for any reason, the determination is not available, the
10 commission shall determine the wage annually, after reasonable investigation
11 and public hearing;

12 (18) Time of accident or date of accident means the time or date of
13 the occurrence of the accidental incident from which compensable injury,
14 disability, or death results;

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

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

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

26

27 SECTION 9. Arkansas Code § 26-54-104(a) is amended to read as follows:

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

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

36 (2) Each legal reserve mutual insurance corporation having assets

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

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

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

13 (5) Each corporation, other than those in subdivisions (2)-(4) of
14 this section, without authorized capital stock shall pay one hundred dollars
15 (\$100);

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

23 (7) Each corporation, actually and actively in the process of
24 liquidation and which does not rent or lease its property but which retains
25 its corporate charter or authority for the sole purpose of winding up its
26 affairs, shall pay an annual tax as provided in subdivision (6) of this
27 section or an amount equivalent to twenty-seven one-hundredths of one percent
28 (0.27%) of the value of its real and tangible personal property in Arkansas,
29 whichever is smaller, but in no instance shall the tax be less than fifty
30 dollars (\$50.00) nor more than one million seventy-five thousand dollars
31 (\$1,075,000)-;

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

35

36 SECTION 10. Subsection (c) of Arkansas Code § 26-32-802 is amended to

1 read as follows:

2 '(c) Unless an operating agreement provides in writing that a member
3 has no power to withdraw by voluntary act from a limited liability company,
4 the member may do so at any time by giving thirty (30) days' written notice to
5 the other members, or such other notice as is provided for in an operating
6 agreement. If the member has the power to withdraw but the withdrawal is a
7 breach of an operating agreement, or the withdrawal occurs as a result of
8 otherwise wrongful conduct of the member, the limited liability company may
9 recover from the withdrawing member damages for breach of the operating
10 agreement or as a result of the wrongful conduct, including the reasonable
11 cost of obtaining replacement of the services the withdrawn member was
12 obligated to perform and may offset the damages against the amount otherwise
13 distributable to him, in addition to pursuing any remedies provided for in an
14 operating agreement or otherwise available under applicable law. Unless
15 otherwise provided in an operating agreement, in the case of a limited
16 liability company for a definite term or particular undertaking, ~~a withdrawal~~
17 ~~by a member may not withdraw from the limited liability company before the~~
18 ~~expiration of that term or undertaking is a breach of the operating agreement.'~~

19 SECTION 11. Subsection (b) of Arkansas Code § 4-32-103 regarding the
20 name of a limited liability company is amended to read as follows:

21 "(b) A limited liability company name ~~may not~~must be the same or
22 ~~deceptively similar to~~distinguishable upon the records of the Secretary of
23 State from:

24 (1) The name of any limited liability company, limited partnership, or
25 corporation existing under the laws of this state or authorized to transact
26 business in this state; or

27 (2) Any name reserved under § 4-32-104"

28

29 SECTION 12. Arkansas Code § 4-43-102(1) regarding the name of a limited
30 partnership is amended to read as follows:

31 "(1) Shall contain without abbreviation the words 'limited
32 partnerships';"

33

34 SECTION 13. All provisions of this act of a general and permanent
35 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
36 Code Revision Commission shall incorporate the same in the Code.

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SECTION 14. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

SECTION 15. All laws and parts of laws in conflict with this act are hereby repealed.

SECTION 16. Emergency. It is hereby found and determined by the General Assembly of the State of Arkansas that the limited liability company statute and other acts relating to pass through entities and related laws need amending in order to better reflect the intent and operation of those laws as originally drafted and to be consistent with current trends. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.

Notwithstanding the foregoing, SECTION 10 of this act ( 4-32-802(c)) shall only apply to limited liability companies in exsistence on the effective date of this act in the event an election is made with the Secretary of State to have this provision apply; otherwise, the original 4-32-802 (c) shall apply to limited liabilty companies existing on the effective date of this act.

/s/Mahony et al