

AN ACT

To amend sections 111.16, 1775.20, and 1782.433 and to enact sections 1775.45 to 1745.52, 1782.241, and 1782.242 of the Revised Code to modify the Uniform Partnership Law relative to the accounting a partner must make to the partnership and mergers and consolidations involving a general partnership, and to modify the Limited Partnerships Law relative to the standard of care owed a partnership by the general partners and self-dealing by a partner.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 111.16, 1775.20, and 1782.433 be amended and sections 1775.45, 1775.46, 1775.47, 1775.48, 1775.49, 1775.50, 1775.51, 1775.52, 1782.241, and 1782.242 of the Revised Code be enacted to read as follows:

Sec. 111.16. The secretary of state shall charge and collect, for the benefit of the state, the following fees:

(A) For filing and recording articles of incorporation of a domestic corporation, including designation of agent:

(1) Wherein the corporation shall not be authorized to issue any shares of capital stock, one hundred twenty-five dollars;

(2) Wherein the corporation shall be authorized to issue shares of capital stock, with or without par value:

(a) Ten cents for each share authorized up to and including one thousand shares;

(b) Five cents for each share authorized in excess of one thousand shares up to and including ten thousand shares;

(c) Two cents for each share authorized in excess of ten thousand shares up to and including fifty thousand shares;

(d) One cent for each share authorized in excess of fifty thousand shares up to and including one hundred thousand shares;

(e) One-half cent for each share authorized in excess of one hundred

thousand shares up to and including five hundred thousand shares;

(f) One-quarter cent for each share authorized in excess of five hundred thousand shares; provided no fee shall be less than one hundred twenty-five dollars or greater than one hundred thousand dollars.

(B) For filing and recording a certificate of amendment to or amended articles of incorporation of a domestic corporation, or for filing and recording a certificate of reorganization, a certificate of dissolution, or an amendment to a foreign license application:

(1) If the domestic corporation is not authorized to issue any shares of capital stock, fifty dollars;

(2) If the domestic corporation is authorized to issue shares of capital stock, fifty dollars, and in case of any increase in the number of shares authorized to be issued, a further sum computed in accordance with the schedule set forth in division (A)(2) of this section less a credit computed in the same manner for the number of shares previously authorized to be issued by the corporation; provided no fee under division (B)(2) of this section shall be greater than one hundred thousand dollars;

(3) If the foreign corporation is not authorized to issue any shares of capital stock, fifty dollars;

(4) If the foreign corporation is authorized to issue shares of capital stock, fifty dollars.

(C) For filing and recording articles of incorporation of a savings and loan association, one hundred twenty-five dollars; and for filing and recording a certificate of amendment to or amended articles of incorporation of a savings and loan association, fifty dollars;

(D) For filing and recording a certificate of merger or consolidation, one hundred twenty-five dollars and, in the case of any new corporation resulting from a consolidation or any surviving corporation that has an increased number of shares authorized to be issued resulting from a merger, an additional sum computed in accordance with the schedule set forth in division (A)(2) of this section less a credit computed in the same manner for the number of shares previously authorized to be issued or represented in this state by each of the corporations for which a consolidation or merger is effected by the certificate;

(E) For filing and recording articles of incorporation of a credit union or the American credit union guaranty association, one hundred twenty-five dollars, and for filing and recording a certificate of increase in capital stock or any other amendment of the articles of incorporation of a credit union or the association, fifty dollars;

(F) For filing and recording articles of organization of a limited liability

company, for filing and recording an application to become a registered foreign limited liability company, for filing and recording a registration application to become a domestic limited liability partnership, or for filing and recording an application to become a registered foreign limited liability partnership, one hundred twenty-five dollars;

(G) For filing and recording a certificate of limited partnership or an application for registration as a foreign limited partnership, one hundred twenty-five dollars.

(H) For filing a copy of papers evidencing the incorporation of a municipal corporation or of annexation of territory by a municipal corporation, five dollars, to be paid by the municipal corporation, the petitioners therefor, or their agent;

(I) For filing and recording any of the following:

(1) A license to transact business in this state by a foreign corporation for profit pursuant to section 1703.04 of the Revised Code or a foreign nonprofit corporation pursuant to section 1703.27 of the Revised Code, one hundred twenty-five dollars;

(2) An annual report or annual statement pursuant to section 1775.63 or 1785.06 of the Revised Code, twenty-five dollars;

(3) Except as otherwise provided in this section or any other section of the Revised Code, any other certificate or paper that is required to be filed and recorded or is permitted to be filed and recorded by any provision of the Revised Code with the secretary of state, twenty-five dollars.

(J) For filing any certificate or paper not required to be recorded, five dollars;

(K)(1) For making copies of any certificate or other paper filed in the office of the secretary of state, a fee not to exceed one dollar per page, except as otherwise provided in the Revised Code, and for creating and affixing the seal of the office of the secretary of state to any good standing or other certificate, five dollars. For copies of certificates or papers required by state officers for official purpose, no charge shall be made.

(2) For creating and affixing the seal of the office of the secretary of state to the certificates described in division (E) of section 1701.81, division (E) of section 1705.38, ~~or~~ division (D) of section 1702.43, division (E) of section 1775.47, or division (E) of section 1782.433 of the Revised Code, twenty-five dollars.

(L) For a minister's license to solemnize marriages, ten dollars;

(M) For examining documents to be filed at a later date for the purpose of advising as to the acceptability of the proposed filing, fifty dollars;

(N) Fifty dollars for filing and recording any of the following:

(1) A certificate of dissolution and accompanying documents, or a certificate of cancellation, under section 1701.86, 1702.47, 1705.43, or 1782.10 of the Revised Code;

(2) A notice of dissolution of a foreign licensed corporation or a certificate of surrender of license by a foreign licensed corporation under section 1703.17 of the Revised Code;

(3) The withdrawal of registration of a foreign or domestic limited liability partnership under section 1775.61 or 1775.64 of the Revised Code, or the certificate of cancellation of registration of a foreign limited liability company under section 1705.57 of the Revised Code;

(4) The filing of a cancellation of disclaimer of general partner status under Chapter 1782. of the Revised Code.

(O) For filing a statement of continued existence by a nonprofit corporation, twenty-five dollars;

(P) For filing a restatement under section 1705.08 or 1782.09 of the Revised Code, an amendment to a certificate of cancellation under section 1782.10 of the Revised Code, an amendment under section 1705.08 or 1782.09 of the Revised Code, or a correction under section 1705.55, 1775.61, 1775.64, or 1782.52 of the Revised Code, fifty dollars;

(Q) For filing for reinstatement of an entity cancelled by operation of law, by the secretary of state, by order of the department of taxation, or by order of a court, twenty-five dollars;

(R) For filing a change of agent, resignation of agent, or change of agent's address under section 1701.07, 1702.06, 1703.041, 1703.27, 1705.06, 1705.55, 1746.04, 1747.03, or 1782.04 of the Revised Code, twenty-five dollars;

(S) For filing and recording any of the following:

(1) An application for the exclusive right to use a name or an application to reserve a name for future use under section 1701.05, 1702.05, 1703.31, 1705.05, or 1746.06 of the Revised Code, fifty dollars;

(2) A trade name or fictitious name registration or report, fifty dollars;

(3) An application to renew any item covered by division (S)(1) or (2) of this section that is permitted to be renewed, twenty-five dollars;

(4) An assignment of rights for use of a name covered by division (S)(1), (2), or (3) of this section, the cancellation of a name registration or name reservation that is so covered, or notice of a change of address of the registrant of a name that is so covered, twenty-five dollars.

(T) For filing and recording a report to operate a business trust or a real estate investment trust, either foreign or domestic, one hundred twenty-five dollars; and for filing and recording an amendment to a report or associated

trust instrument, or a surrender of authority, to operate a business trust or real estate investment trust, fifty dollars;

(U)(1) For filing and recording the registration of a trademark, service mark, or mark of ownership, one hundred twenty-five dollars;

(2) For filing and recording the change of address of a registrant, the assignment of rights to a registration, a renewal of a registration, or the cancellation of a registration associated with a trademark, service mark, or mark of ownership, twenty-five dollars.

Fees specified in this section may be paid by cash, check, or money order, by credit ~~card~~ card in accordance with section 113.40 of the Revised Code, or by an alternative payment program in accordance with division (B) of section 111.18 of the Revised Code. Any credit card number or the expiration date of any credit card is not subject to disclosure under Chapter 149. of the Revised Code.

Sec. 1775.20. (A) Every partner ~~must, other than a general partner of a limited partnership, shall~~ account to the partnership for any benefit and hold as trustee for it any profits derived by ~~him~~ the partner without the consent of the other partners from any transaction connected with the formation, conduct, or liquidation of the partnership or from any use by ~~him~~ the partner of its property.

(B) This section applies also to the representatives of a deceased partner engaged in the liquidation of the affairs of the partnership as the personal representatives of the last surviving partner.

Sec. 1775.45. (A) Pursuant to a written agreement of merger between the constituent entities as provided in this section, a domestic general partnership and one or more additional domestic general partnerships or other domestic or foreign entities may be merged into a surviving domestic general partnership. Pursuant to a written agreement of consolidation between the constituent entities as provided in this section, two or more domestic or foreign entities may be consolidated into a new domestic general partnership formed by such consolidation. If any constituent entity is formed or organized under the laws of any state other than this state or under any chapter of the Revised Code other than this chapter, the merger or consolidation also must be permitted by the chapter of the Revised Code under which each domestic constituent entity exists and by the laws under which each foreign constituent entity exists.

(B) The written agreement of merger or consolidation of constituent entities into a surviving or new domestic general partnership shall set forth all of the following:

(1) The name and the form of entity of each constituent entity, the state

under the laws of which each constituent entity exists, and the name of the surviving or new domestic general partnership:

(2) In the case of a merger, that one or more specified constituent entities will be merged into a specified surviving domestic general partnership, and, in the case of a consolidation, that the constituent entities will be consolidated into a new domestic general partnership:

(3) All statements and matters required to be set forth in such an agreement of merger or consolidation by the laws under which each constituent entity exists:

(4) In the case of a consolidation, the partnership agreement of the new domestic general partnership or a provision that the written partnership agreement of a specified constituent general partnership, a copy of which shall be attached to the agreement of consolidation, with any amendments that are set forth in the agreement of consolidation, shall be the agreement of general partnership of the new domestic general partnership:

(5) The name and address of the statutory agent upon whom any process, notice, or demand against any constituent entity, the surviving domestic general partnership, or the new domestic general partnership may be served:

(6) In the case of a merger, any changes in the general partners of the surviving domestic general partnership and, in the case of a consolidation, the general partners of the new domestic general partnership or a provision specifying the general partners of one or more specified constituent partnerships that shall constitute the initial general partners of the new domestic general partnership:

(7) The terms of the merger or consolidation; the mode of carrying them into effect; and the manner and basis of converting the interests or shares in the constituent entities into, or substituting the interests or shares in the constituent entities for, interests, evidences of indebtedness, other securities, cash, rights, or any other property or any combination of interests, evidences of indebtedness, securities, cash, rights, or any other property of the surviving domestic general partnership, of the new domestic general partnership, or of any other entity. No such conversion or substitution shall be effected if there are reasonable grounds to believe that the conversion or substitution would render the surviving or new domestic general partnership unable to pay its obligations as they become due in the usual course of its affairs.

(C) The written agreement of merger or consolidation of constituent entities into a surviving or new domestic general partnership may set forth any of the following:

(1) The effective date of the merger or consolidation, which date may be on or after the date of the filing of the certificate of merger or consolidation;

(2) A provision authorizing one or more of the constituent entities to abandon the proposed merger or consolidation prior to filing the certificate of merger or consolidation pursuant to section 1775.47 of the Revised Code by action of the general partners of a constituent partnership, the directors of a constituent corporation, or the comparable representatives of any other constituent entity;

(3) In the case of a merger, any amendments to the agreement of general partnership of the surviving domestic general partnership, or a provision that the written partnership agreement of a specified constituent general partnership other than the surviving domestic general partnership, with any amendments that are set forth in the agreement of merger, shall be the partnership agreement of the surviving domestic general partnership;

(4) A statement of, or a statement of the method of determining, the fair value of the assets to be owned by the surviving domestic general partnership;

(5) The parties to the agreement of merger or consolidation in addition to the constituent entities;

(6) Any additional provision necessary or desirable with respect to the proposed merger or consolidation.

(D) To effect the merger or consolidation, the agreement of merger or consolidation shall be adopted by the general partners of each constituent domestic general partnership, including the surviving domestic general partnership in the case of a merger, and shall be adopted by or otherwise authorized by or on behalf of each other constituent entity in accordance with the laws under which it exists.

(E) All partners, whether or not they are entitled to vote or act, shall be given written notice of any meeting of general partners of a constituent domestic general partnership or of any proposed action by general partners of a constituent domestic general partnership, which meeting or action is to adopt an agreement of merger or consolidation. The notice shall be given to the partners either by mail at their addresses as they appear on the records of the partnership or in person and, unless the partnership agreement provides a shorter or longer period, shall be given not less than seven and not more than sixty days before the meeting or the effective date of the action. The notice shall be accompanied by a copy or a summary of the material provisions of the agreement of merger or consolidation.

olidation is the unanimous vote or action of the general partners or such different number or proportion as provided in writing in the partnership agreement. If the agreement of merger or consolidation would have an effect or authorize any action that under any applicable provision of law or the partnership agreement could be effected or authorized only by or pursuant to a specified vote or action of the partners, or of any class or group of partners, the agreement of merger or consolidation also shall be adopted or approved by the same vote or action as would be required to effect that change or authorize that action. Each person who will continue to be or who will become a general partner of a partnership that is the surviving or new entity in a merger or consolidation shall specifically agree in writing to continue or to become, as the case may be, a general partner of the partnership that is the surviving or new entity.

(G) At any time before the filing of the certificate of merger or consolidation pursuant to section 1775.47 of the Revised Code, the merger or consolidation may be abandoned by the general partners of any constituent partnership, the directors of any constituent corporation, or the comparable representatives of any other constituent entity if the general partners, directors, or other representatives are authorized to do so by the agreement of merger or consolidation or by the same vote or action as was required to adopt the agreement of merger or consolidation. The agreement of merger or consolidation may contain a provision authorizing less than all of the general partners of any constituent partnership, the directors of any constituent corporation, or the comparable representatives of any other constituent entity to amend the agreement of merger or consolidation at any time before the filing of the certificate of merger or consolidation, except that, after the adoption of the agreement of merger or consolidation by the general partners of any constituent domestic general partnership, less than all of the general partners shall not be authorized to amend the agreement of merger or consolidation to do any of the following:

(1) Alter or change the amount or kind of interests, shares, evidences of indebtedness, other securities, cash, rights, or any other property to be received by general partners of the constituent domestic general partnership in conversion of, or in substitution for, their interests;

(2) Alter or change any term of the partnership agreement of the surviving or new domestic general partnership, except for alterations or changes that could otherwise be adopted by the general partners of the surviving or new domestic general partnership;

(3) Alter or change any other terms and conditions of the agreement of merger or consolidation if any of the alterations or changes, alone or in the

aggregate, would materially adversely affect the general partners or any class or group of general partners of the constituent domestic general partnership.

Sec. 1775.46. (A) Pursuant to a written agreement of merger or consolidation between the constituent entities as provided in this section, a domestic general partnership and one or more additional domestic or foreign entities may be merged into a surviving entity other than a domestic general partnership, or a domestic general partnership together with one or more additional domestic or foreign entities may be consolidated into a new entity other than a domestic general partnership to be formed by such consolidation. The merger or consolidation must be permitted by the chapter of the Revised Code under which each domestic constituent entity exists and by the laws under which each foreign constituent entity exists.

(B) The written agreement of merger or consolidation shall set forth all of the following:

(1) The name and the form of entity of each constituent entity and the state under the laws of which each constituent entity exists;

(2) In the case of a merger, that one or more specified constituent domestic general partnerships and other specified constituent entities will be merged into a specified surviving foreign entity or surviving domestic entity other than a domestic general partnership, or, in the case of a consolidation, that the constituent entities will be consolidated into a new foreign entity or a new domestic entity other than a domestic general partnership;

(3) If the surviving or new entity is a foreign general partnership, all statements and matters that would be required by section 1775.45 of the Revised Code if the surviving or new entity were a domestic general partnership;

(4) The name and the form of entity of the surviving or new entity, the state under the laws of which the surviving entity exists or the new entity is to exist, and the location of the principal office of the surviving or new entity;

(5) All additional statements and matters required to be set forth in such an agreement of merger or consolidation by the laws under which each constituent entity exists and, in the case of a consolidation, the new entity is to exist;

(6) The consent of the surviving or new foreign entity to be sued and served with process in this state and the irrevocable appointment of the secretary of state as its agent to accept service of process in any proceeding in this state to enforce against the surviving or new foreign entity any obligation of any constituent domestic general partnership or to enforce the

rights of a dissenting partner of any constituent domestic general partnership;

(7) If the surviving or new entity is a foreign corporation that desires to transact business in this state as a foreign corporation, a statement to that effect, together with a statement regarding the appointment of a statutory agent and service of any process, notice, or demand upon that statutory agent or the secretary of state, as required when a foreign corporation applies for a license to transact business in this state;

(8) If the surviving or new entity is a foreign limited partnership that desires to transact business in this state as a foreign limited partnership, a statement to that effect, together with all of the information required under section 1782.49 of the Revised Code when a foreign limited partnership registers to transact business in this state;

(9) If the surviving or new entity is a foreign limited liability company that desires to transact business in this state as a foreign limited liability company, a statement to that effect, together with all of the information required under section 1705.54 of the Revised Code when a foreign limited liability company registers to transact business in this state.

(C) The written agreement of merger or consolidation also may set forth any additional provision permitted by the laws of any state under the laws of which any constituent entity exists, consistent with the laws under which the surviving entity exists or the new entity is to exist.

(D) To effect the merger or consolidation, the agreement of merger or consolidation shall be adopted by the general partners of each constituent domestic general partnership, in the same manner and with the same notice to and vote or action of partners or of a particular class or group of partners as is required by section 1775.45 of the Revised Code. The agreement of merger or consolidation also shall be approved or otherwise authorized by or on behalf of each constituent entity in accordance with the laws under which it exists. Each person who will continue to be or who will become a general partner of a partnership that is the surviving or new entity in a merger or consolidation shall specifically agree in writing to continue or to become, as the case may be, a general partner of the surviving or new entity.

consolidation may contain a provision authorizing less than all of the general partners of any constituent partnership, the directors of any constituent corporation, or the comparable representatives of any other constituent entity to amend the agreement of merger or consolidation at any time before the filing of the certificate of merger or consolidation, except that after the adoption of the agreement of merger or consolidation by the general partners of any constituent domestic general partnership, less than all of the general partners shall not be authorized to amend the agreement of merger or consolidation to do any of the following:

(1) Alter or change the amount or kind of interests, shares, evidences of indebtedness, other securities, cash, rights, or any other property to be received by general partners of the constituent domestic general partnership in conversion of or in substitution for their interests;

(2) If the surviving or new entity is a partnership, alter or change any term of the partnership agreement of the surviving or new partnership, except for alterations or changes that otherwise could be adopted by the general partners of the surviving or new partnership;

(3) If the surviving or new entity is a corporation or any other entity other than a partnership, alter or change any term of the articles or comparable instrument of the surviving or new corporation or entity, except for alterations or changes that otherwise could be adopted by the directors or comparable representatives of the surviving or new corporation or entity;

(4) Alter or change any other terms and conditions of the agreement of merger or consolidation if any of the alterations or changes, alone or in the aggregate, would materially adversely affect the general partners or any class or group of general partners of the constituent domestic general partnership.

Sec. 1775.47. (A) Upon the adoption by each constituent entity of an agreement of merger or consolidation pursuant to section 1775.45 or 1775.46 of the Revised Code, a certificate of merger or consolidation shall be filed with the secretary of state that is signed by an authorized representative of each constituent entity. The certificate shall be on a form prescribed by the secretary of state and shall set forth only the information required by this section.

(B)(1) The certificate of merger or consolidation shall set forth all of the following:

(a) The name and the form of entity of each constituent entity and the state under the laws of which each constituent entity exists;

(b) A statement that each constituent entity has complied with all of the laws under which it exists and that the laws permit the merger or

consolidation:

(c) The name and mailing address of the person or entity that is to provide, in response to any written request made by a shareholder, partner, or other equity holder of a constituent entity, a copy of the agreement of merger or consolidation:

(d) The effective date of the merger or consolidation, which date may be on or after the date of the filing of the certificate:

(e) The signature of the representative or representatives authorized to sign the certificate on behalf of each constituent entity and the office held or the capacity in which the representative is acting:

(f) A statement that the agreement of merger or consolidation is authorized on behalf of each constituent entity and that the persons who signed the certificate on behalf of each entity are authorized to do so:

(g) In the case of a merger, a statement that one or more specified constituent entities will be merged into a specified surviving entity or, in the case of a consolidation, a statement that the constituent entities will be consolidated into a new entity:

(h) The name and form of the surviving entity in the case of a merger or the name and form of the new entity in the case of a consolidation:

(i) In the case of a merger, if the surviving entity is a foreign entity not licensed to transact business in this state, the name and address of the statutory agent upon whom any process, notice, or demand may be served:

(j) In the case of a consolidation, the name and address of the statutory agent upon whom any process, notice, or demand against any constituent entity or the new entity may be served.

(2) In the case of a consolidation into a new domestic corporation, limited liability company, or limited partnership, the articles of incorporation, the articles of organization, or the certificate of limited partnership of the new domestic entity shall be filed with the certificate of consolidation.

(3) In the case of a merger into a domestic corporation, limited liability company, or limited partnership, any amendments to the articles of incorporation, articles of organization, or certificate of limited partnership of the surviving domestic entity shall be filed with the certificate of merger.

(4) If the surviving or new entity is a foreign entity that desires to transact business in this state as a foreign corporation, limited liability company, or limited partnership, the certificate of merger or consolidation shall be accompanied by the information required by division (B)(7), (8), or (9) of section 1775.46 of the Revised Code.

(5) If a foreign or domestic corporation licensed to transact business in

this state is a constituent entity and the surviving or new entity resulting from the merger or consolidation is not a foreign or domestic corporation that is to be licensed to transact business in this state, the certificate of merger or consolidation shall be accompanied by the affidavits, receipts, certificates, or other evidence required by division (H) of section 1701.86 of the Revised Code, with respect to each domestic constituent corporation, and by the affidavits, receipts, certificates, or other evidence required by division (C) or (D) of section 1703.17 of the Revised Code, with respect to each foreign constituent corporation licensed to transact business in this state.

(C) If any constituent entity in a merger or consolidation is organized or formed under the laws of a state other than this state or under any chapter of the Revised Code other than this chapter, there also shall be filed in the proper office all documents that are required to be filed in connection with the merger or consolidation by the laws of that state or by that chapter.

(D) Upon the filing of a certificate of merger or consolidation and other filings as described in division (C) of this section or at any later date that the certificate of merger or consolidation specifies, the merger or consolidation is effective, subject to the limitation specified in division (B)(7) of section 1775.45 of the Revised Code.

(E) The secretary of state shall furnish, upon request and payment of the fee specified in division (K)(2) of section 111.16 of the Revised Code, the secretary of state's certificate setting forth: the name and form of entity of each constituent entity and the states under the laws of which each constituent entity existed prior to the merger or consolidation; the name and the form of entity of the surviving or new entity and the state under the laws of which the surviving entity exists or the new entity is to exist; the date of filing of the certificate of merger or consolidation with the secretary of state; and the effective date of the merger or consolidation. The certificate of the secretary of state, or a copy of the certificate of merger or consolidation certified by the secretary of state, may be filed for record in the office of the recorder of any county in this state and, if filed, shall be recorded in the records of deeds for that county. For that recording, the county recorder shall charge and collect the same fee as in the case of deeds.

Sec. 1775.48. (A) When a merger or consolidation becomes effective, all of the following apply:

(1) The separate existence of each constituent entity other than the surviving entity in a merger shall cease, except that whenever a conveyance, assignment, transfer, deed, or other instrument or act is necessary to vest property or rights in the surviving or new entity, the general partners,

officers, or other authorized representatives of the respective constituent entities shall execute, acknowledge, and deliver such instruments and do such acts. For these purposes, the existence of the constituent entities and the authority of their respective general partners, officers, directors, or other representatives are continued notwithstanding the merger or consolidation.

(2) In the case of a consolidation, the new entity exists when the consolidation becomes effective and, if the new entity is a domestic general partnership, the written partnership agreement contained in or provided for in the agreement of consolidation shall be its original partnership agreement.

(3) In the case of a merger in which the surviving entity is a general partnership, the written partnership agreement of the surviving general partnership in effect immediately prior to the time the merger becomes effective shall be its partnership agreement after the merger except as otherwise provided in the agreement of merger.

(4) The surviving or new entity possesses all of the following, and all of the following are vested in the surviving or new entity without further act or deed:

(a) Except to the extent limited by the mandatory provisions of applicable law, the following:

(i) All assets and property of every description of each constituent entity, and every interest in the assets and property of each constituent entity, wherever the assets, property, and interests are located. Title to any real estate or any interest in real estate that was vested in any constituent entity shall not revert or in any way be impaired by reason of the merger or consolidation.

(ii) The rights, privileges, immunities, powers, franchises, and authority, whether of a public or private nature, of each constituent entity.

(b) All obligations belonging to or due to each constituent entity.

(5) The surviving or new entity is liable for all the obligations of each constituent entity, including liability to dissenting partners, dissenting shareholders, or other dissenting equity holders. Any claim existing or any action or proceeding pending by or against any constituent entity may be prosecuted to judgment with right of appeal, as if the merger or consolidation had not taken place, or the surviving or new entity may be substituted in place of any constituent entity.

ntity surviving or the new entity resulting from the merger or consolidation, then the former general partner shall have no liability for any obligation incurred after the merger or consolidation except to the extent that a former creditor of the constituent partnership in which the former general partner was a general partner extends credit to the surviving or new entity reasonably believing that the former general partner continued as a general partner of the surviving or new entity.

(B) If a general partner of a constituent partnership is not a general partner of the entity surviving or the new entity resulting from the merger or consolidation, then unless that general partner agrees otherwise in writing, the general partner shall be indemnified by the surviving or new entity against all present or future liabilities of the constituent partnership of which the general partner was a general partner. Any amount payable pursuant to section 1775.50 of the Revised Code to a partner of the constituent partnership in which that general partner was a partner shall be a present liability of that constituent partnership.

(C) In the case of a merger of a constituent domestic general partnership into a foreign surviving corporation, limited liability company, or general partnership that is not licensed or registered to transact business in this state or in the case of a consolidation of a constituent domestic limited partnership into a new foreign corporation, limited liability company, or limited partnership, if the surviving or new entity intends to transact business in this state and the certificate of merger or consolidation is accompanied by the information described in division (B)(4) of section 1775.47 of the Revised Code, then on the effective date of the merger or consolidation the surviving or new entity shall be considered to have complied with the requirements for procuring a license or for registration to transact business in this state as a foreign corporation, limited liability company, or limited partnership, as the case may be. In such a case, a copy of the certificate of merger or consolidation certified by the secretary of state constitutes the license certificate prescribed for a foreign corporation or the application for registration prescribed for a foreign limited liability company or foreign limited partnership.

(D) Any action to set aside any merger or consolidation on the ground that any section of the Revised Code applicable to the merger or consolidation has not been complied with shall be brought within ninety days after the effective date of the merger or consolidation or forever be barred.

(E) In the case of an entity organized or existing under the laws of any state other than this state, this section is subject to the laws of the state under

the laws of which the entity exists or in which it has property.

Sec. 1775.49. (A) Unless otherwise provided in writing in the partnership agreement of a constituent domestic general partnership, the following are entitled to relief as dissenting partners as provided in section 1775.50 of the Revised Code:

(1) Partners of a domestic general partnership that is being merged or consolidated into a surviving or new entity, domestic or foreign, pursuant to section 1775.45 or 1775.46 of the Revised Code;

(2) In the case of a merger into a domestic general partnership, partners of the surviving domestic general partnership who under section 1775.45 of the Revised Code are entitled to vote or act on the adoption of an agreement of merger, but only as to the interests so entitling them to vote or act.

(B) Unless otherwise expressly agreed to in writing, a general partner of any constituent partnership shall be liable to the partners of the constituent partnership for any amount payable to them pursuant to section 1775.50 of the Revised Code as if the amount so payable were an existing liability of the constituent partnership at the time of the merger or consolidation.

Sec. 1775.50. (A) A partner of a domestic general partnership is entitled to relief as a dissenting partner in respect of the proposals described in section 1775.49 of the Revised Code only in compliance with this section.

(B) If the proposal of merger or consolidation is to be submitted to the partners at a meeting, the dissenting partner shall be a partner and a record holder of the partnership interests as to which the dissenting partner seeks relief as of the date fixed for the determination of partners entitled to notice of the meeting, and such interests shall not have been voted in favor of the proposal. Not later than ten days after the date on which the vote on the proposal was taken at the meeting of the partners, the dissenting partner shall deliver to the general partnership a written demand for payment to the dissenting partner of the fair cash value of the interests as to which the dissenting partner seeks relief that states the dissenting partner's address, the number and class of those interests, and the amount claimed by the dissenting partner as the fair cash value of the interests.

the request for approval of or action on the proposal was mailed to the partners, the dissenting partner shall deliver to the partnership a written demand for payment to the dissenting partner of the fair cash value of the interests as to which the dissenting partner seeks relief, which demand shall state the dissenting partner's address, the number and class of such interests, and the amount claimed by the dissenting partner as the fair cash value of those interests.

(D) In the case of a merger or consolidation, a demand served on the constituent domestic general partnership involved constitutes service on the surviving entity or the new entity, whether the demand is served before, on, or after the effective date of the merger or consolidation.

(E) If the interests as to which a dissenting partner seeks relief are represented by certificates and if the domestic general partnership sends to the dissenting partner, at the address specified in the dissenting partner's demand, a request for certificates representing the interests as to which the dissenting partner seeks relief, the dissenting partner, within fifteen days from the date on which the request was sent, shall deliver to the general partnership the certificates requested so that the general partnership may endorse on them a legend to the effect that a demand for the fair cash value of such interests has been made. The general partnership promptly shall return the endorsed certificates to the dissenting partner. The failure of a dissenting partner to deliver such certificates terminates rights as a dissenting partner, at the option of the general partnership, exercised by written notice sent to the dissenting partner within twenty days after the lapse of the fifteen-day period, unless a court for good cause shown otherwise directs. If interests represented by a certificate on which such a legend has been endorsed are transferred, each new certificate issued for them shall bear a similar legend, together with the name of the original dissenting holder of such interests. Upon receiving a demand for payment from a dissenting partner who is a record holder of uncertificated interests, the general partnership shall make an appropriate notation of the demand for payment in its records. If uncertificated interests for which payment has been demanded are to be transferred, any writing sent to evidence the transfer shall bear the legend required for certificated interests as provided in this division. A transferee of the interests receiving a certificate so endorsed, or of uncertificated interests where such a notation has been made, acquires only such rights in the general partnership as the original partner holding such interests had immediately after the service of a demand for payment of the fair cash value of the interests. A request under this division by the general partnership is not an admission by it that the holder of the

interest is entitled to relief under this section.

(F) Unless the partnership agreement of the constituent domestic general partnership in which the dissenting partner was a partner provides a reasonable basis for determining and paying the fair cash value of the interests as to which the dissenting partner seeks relief or unless that partnership and the dissenting partner have come to an agreement on the fair cash value of the interests as to which the dissenting partner seeks relief, the dissenting partner or the general partnership, which in the case of a merger or consolidation may be the surviving or new entity, within ninety days after the service of the demand by the dissenting partner, may file a complaint under section 1775.51 of the Revised Code. The complaint shall be filed in the court of common pleas of the county in which the principal office of the general partnership that issued the interests is located or was located when the proposal of merger or consolidation was adopted by the partners of the general partnership. Other dissenting partners, within that ninety-day period, may join as plaintiffs or may be joined as defendants in any such proceeding, and any two or more such proceedings may be consolidated.

(G) The right and obligation of a dissenting partner to receive such fair cash value and to sell such interests as to which the dissenting partner seeks relief and the right and obligation of the domestic general partnership to purchase such interests and to pay the fair cash value of them terminate if any of the following applies:

(1) The dissenting partner has not complied with this section, unless the general partnership waives such failure.

(2) The general partnership abandons the merger or consolidation or is finally enjoined or prevented from carrying it out, or the partners rescind their adoption or approval of the merger or consolidation.

(3) The dissenting partner withdraws the dissenting partner's demand, with the consent of the general partnership.

(4) All of the following apply:

(a) The partnership agreement of the constituent domestic general partnership in which the dissenting partner was a partner does not provide a reasonable basis for determining and paying the dissenting partner the fair cash value of the dissenting partner's interest.

(b) The general partnership and the dissenting partner have not agreed upon the fair cash value of the interest.

(c) Neither the dissenting partner nor the general partnership has filed or joined in a complaint under division (F) of this section within the period provided in that division.

(H) Unless otherwise provided in the partnership agreement of the

constituent domestic general partnership in which the dissenting partner was a partner, from the time the dissenting partner gives the demand until either the termination of the rights and obligations arising from it or the purchase of the interests by the general partnership, all other rights accruing from such interests, including voting or distribution rights, are suspended. If, during the suspension, any distribution is paid in money upon interests of such class or any dividend, distribution, or interest is paid in money upon any securities issued in extinguishment of, or in substitution for, such interest, an amount equal to the dividend, distribution, or interest that, except for the suspension, would have been payable upon such interests or securities shall be paid to the holder of record as a credit upon the fair cash value of the interests. If the right to receive fair cash value is terminated other than by the purchase of the interests by the general partnership, all rights of the dissenting partner shall be restored and all distributions that, except for the suspension, would have been made shall be made to the holder of record of the interests at the time of termination.

Sec. 1775.51. (A) When authorized by division (F) of section 1775.50 of the Revised Code, a dissenting partner or general partnership may file a complaint under this section demanding the relief described in this section. A complaint filed under this section shall contain a brief statement of the facts, including the vote or action by the partners and the facts entitling the dissenting partner to the relief demanded. No answer to such a complaint is required. Upon the filing of such a complaint, the court, on motion of the petitioner, shall enter an order fixing a date for a hearing on the complaint and requiring that a copy of the complaint and a notice of the filing and of the date for the hearing be given to the respondent or defendant in the manner in which summons is required to be served or substituted service is required to be made in other cases. On the date fixed for the hearing on the complaint or any adjournment of it, the court shall determine from the complaint and from such evidence as is submitted by either party whether the dissenting partner is entitled to be paid the fair cash value of any interests and, if so, the number and class of such interests. If the court finds that the dissenting partner is so entitled, it may appoint one or more persons as appraisers to receive evidence and to recommend a decision on the amount of the fair cash value. The appraisers have such power and authority as is specified in the order of their appointment. The court thereupon shall make a finding as to the fair cash value of the interests and shall render judgment against the general partnership for the payment of it, with interest at such rate and from such date as the court considers equitable. The costs of the proceeding, including reasonable compensation to the appraisers to be

fixed by the court, shall be assessed or apportioned as the court considers equitable. The proceeding is a special proceeding and final orders in it may be vacated, modified, or reversed on appeal pursuant to the Rules of Appellate Procedure and, to the extent not in conflict with those rules, Chapter 2505. of the Revised Code. If, during the pendency of any proceeding under this section, a suit or proceeding is or has been instituted to enjoin or otherwise to prevent the carrying out of the action as to which the partner has dissented, the proceeding instituted under this section shall be stayed until the final determination of the other suit or proceeding. Unless any provision of division (G) of section 1775.50 of the Revised Code is applicable, the fair cash value of the interests that is agreed upon by the parties or fixed under this section shall be paid within thirty days after the date of final determination of such value under this division or the consummation of the merger or consolidation, whichever occurs last. Upon the occurrence of the last such event, payment shall be made immediately to a holder of uncertificated interests entitled to such payment. In the case of holders of interests represented by certificates, payment shall be made only upon and simultaneously with the surrender to the domestic general partnership of the certificates representing the interests for which the payment is made.

(B) If the proposal of merger or consolidation was submitted to the partners of the general partnership for a vote at a meeting, fair cash value as to those partners shall be determined as of the day before the day on which the vote by the partners was taken. If the proposal was submitted to the partners for written approval or other action, fair cash value as to those partners shall be determined as of the day before the day on which the request for the approval or action was sent. The fair cash value of an interest for purposes of this section is the amount that a willing seller who is under no compulsion to sell would be willing to accept and that a willing buyer who is under no compulsion to purchase would be willing to pay, but the fair cash value paid to any partner shall not exceed the amount specified in the demand of that partner. In computing such fair cash value, any appreciation or depreciation in market value resulting from the merger or consolidation shall be excluded.

Sec. 1775.52. If a domestic general partnership is a constituent entity to a merger or consolidation that has become effective, and the domestic general partnership is not the surviving or resulting entity of the merger or consolidation, a judgment creditor of a partner of that domestic general partnership shall not levy execution against the assets of the partner to satisfy a judgment based on a claim against the surviving or resulting entity

of the merger or consolidation unless any of the following applies:

(A) The claim is for an obligation of the domestic general partnership for which the partner is liable as provided in this chapter and one of the following applies:

(1) A judgment based on the same claim has been obtained against the surviving or resulting entity of the merger or consolidation and a writ of execution on the judgment has been returned unsatisfied in whole or in part.

(2) The surviving or resulting entity of the merger or consolidation is a debtor in bankruptcy.

(3) The partner has agreed that the creditor need not exhaust the assets of the domestic general partnership that was not the surviving or resulting entity of the merger or consolidation.

(4) The partner has agreed that the creditor need not exhaust the assets of the surviving or resulting entity of the merger or consolidation.

(B) A court grants permission to the judgment creditor to levy execution against the assets of the partner based on a finding that the assets of the surviving or resulting entity of the merger or consolidation that are subject to execution are clearly insufficient to satisfy the judgment, that exhaustion of the assets of the surviving or resulting entity of the merger or consolidation is excessively burdensome, or that the grant of permission is an appropriate exercise of the court's equitable powers.

(C) Liability is imposed on the partner by law or contract independent of the existence of the surviving or resulting entity of the merger or consolidation.

Sec. 1782.241. (A) A general partner shall perform the duties of a general partner in good faith, in a manner the general partner reasonably believes to be in or not opposed to the best interests of the limited partnership, and with the care that an ordinarily prudent person in a like position would use under similar circumstances. In performing a general partner's duties, a general partner is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, that are prepared or presented by either of the following:

(1) One or more general partners, employees of the limited partnership, or employees of a general partner, who the general partner reasonably believes are reliable and competent in the matters prepared or presented;

(2) Legal counsel, public accountants, or other persons as to matters that the general partner reasonably believes are within the person's professional or expert competence.

(B) For purposes of division (A) of this section, the following apply:

(1) A general partner shall not be found to have violated the duties of a

general partner under division (A) of this section, unless it is proved by clear and convincing evidence that the general partner has not acted in good faith, in a manner the general partner reasonably believes to be in or not opposed to the best interests of the limited partnership, or with the care that an ordinarily prudent person in a like position would use under similar circumstances, in any action brought against the general partner, including actions involving or affecting the general partner's service in any other position or relationship with the limited partnership.

(2) A general partner shall not be considered to be acting in good faith if the general partner has knowledge concerning the matter in question that would cause reliance on information, opinions, reports, or statements that are prepared or presented by the persons described in divisions (A)(1) and (2) of this section to be unwarranted.

Sec. 1782.242. No contract, action, or transaction shall be void or voidable with respect to a limited partnership for the reason that the contract, action, or transaction is among or affects the limited partnership and one or more of its partners, or that the contract, action, or transaction is among or affects the limited partnership and any other person in which one or more of the partners are directors, trustees, officers, or partners, or have a financial or personal interest, if any of the following applies:

(A) The material facts as to the partner or partners and their relationship or interest and as to the contract, action, or transaction are disclosed in writing to every partner before that partner is admitted to the partnership.

(B) The material facts as to the partner or partners and their relationship or interest and as to the contract, action, or transaction are disclosed in writing to all partners; the contract, action, or transaction is fair as to the limited partnership; and the disinterested general partners acting in good faith reasonably justified by the facts, authorize the contract, action, or transaction by a majority vote, even though the disinterested general partners constitute less than a majority of the general partners.

(C) The contract, action, or transaction is fair as to the limited partnership as of the time the contract, action, or transaction is authorized and approved by a majority in interest of the disinterested limited partners.

Sec. 1782.433. (A) Upon the adoption by each constituent entity of an agreement of merger or consolidation pursuant to section 1782.431 or 1782.432 of the Revised Code, a certificate of merger or consolidation shall be filed with the secretary of state that is signed by an authorized representative of each constituent entity. The certificate shall be on a form prescribed by the secretary of state and shall set forth only the information required by this section.

(B)(1) The certificate of merger or consolidation shall set forth all of the following:

(a) The name and the form of entity of each constituent entity and the state under the laws of which each constituent entity exists;

(b) A statement that each constituent entity has complied with all of the laws under which it exists and that the laws permit the merger or consolidation;

(c) The name and mailing address of the person or entity that is to provide, in response to any written request made by a shareholder, partner, or other equity holder of a constituent entity, a copy of the agreement of merger or consolidation;

(d) The effective date of the merger or consolidation, which date may be on or after the date of the filing of the certificate;

(e) The signature of the representative or representatives authorized to sign the certificate on behalf of each constituent entity and the office held or the capacity in which the representative is acting;

(f) A statement that the agreement of merger or consolidation is authorized on behalf of each constituent entity and that the persons who signed the certificate on behalf of each entity are authorized to do so;

(g) In the case of a merger, a statement that one or more specified constituent entities will be merged into a specified surviving entity or, in the case of a consolidation, a statement that the constituent entities will be consolidated into a new entity;

(h) In the case of a merger, if the surviving entity is a foreign entity not licensed to transact business in this state, the name and address of the statutory agent upon whom any process, notice, or demand may be served;

(i) In the case of a consolidation, the name and address of the statutory agent upon whom any process, notice, or demand against any constituent entity or the new entity may be served.

(2) In the case of a consolidation into a new domestic corporation, limited liability company, or limited partnership, the articles of incorporation, the articles of organization, or the certificate of limited partnership of the new domestic entity shall be filed with the certificate of merger or consolidation.

(3) In the case of a merger into a domestic corporation, limited liability company, or limited partnership, any amendments to the articles of incorporation, articles of organization, or certificate of limited partnership of the surviving domestic entity shall be filed with the certificate of merger or consolidation.

(4) If the surviving or new entity is a foreign entity that desires to

transact business in this state as a foreign corporation, limited liability company, or limited partnership, the certificate of merger or consolidation shall be accompanied by the information required by division (B)(7), (8), or (9) of section 1782.432 of the Revised Code.

(5) If a foreign or domestic corporation licensed to transact business in this state is a constituent entity and the surviving or new entity resulting from the merger or consolidation is not a foreign or domestic corporation that is to be licensed to transact business in this state, the certificate of merger or consolidation shall be accompanied by the affidavits, receipts, certificates, or other evidence required by division (H) of section 1701.86 of the Revised Code, with respect to each domestic constituent corporation, and by the affidavits, receipts, certificates, or other evidence required by division (C) or (D) of section 1703.17 of the Revised Code, with respect to each foreign constituent corporation licensed to transact business in this state.

(C) If any constituent entity in a merger or consolidation is organized or formed under the laws of a state other than this state or under any chapter of the Revised Code other than this chapter, there also shall be filed in the proper office all documents that are required to be filed in connection with the merger or consolidation by the laws of that state or by that chapter.

(D) Upon the filing of a certificate of merger or consolidation and other filings as described in division (C) of this section or at any later date that the certificate of merger or consolidation specifies, the merger or consolidation is effective.

(E) The secretary of state shall furnish, upon request and payment of the fee specified in division ~~(D)~~(K)(2) of section 111.16 of the Revised Code, the secretary of state's certificate setting forth: the name and form of entity of each constituent entity and the states under the laws of which each constituent entity existed prior to the merger or consolidation; the name and the form of entity of the surviving or new entity and the state under the laws of which the surviving entity exists or the new entity is to exist; the date of filing of the certificate of merger or consolidation with the secretary of state; and the effective date of the merger or consolidation. The certificate of the secretary of state, or a copy of the certificate of merger or consolidation certified by the secretary of state, may be filed for record in the office of the recorder of any county in this state and, if filed, shall be recorded in the records of deeds for that county. For that recording, the county recorder shall charge and collect the same fee as in the case of deeds.

SECTION 2. That existing sections 111.16, 1775.20, and 1782.433 of the Revised Code are hereby repealed.

Speaker _____ *of the House of Representatives.*

President _____ *of the Senate.*

Passed _____, 20____

Approved _____, 20____

Governor.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the
____ day of _____, A. D. 20____.

Secretary of State.

File No. _____ Effective Date _____