

LEGISLATIVE BILL 1228

Approved by the Governor March 13, 1990

Introduced by Pirsch, 10

AN ACT relating to limited partnerships; to amend sections 21-2070, 67-236, 67-242, 67-245, 67-248.01, 67-248.02, 67-283, and 67-293, Revised Statutes Supplement, 1989; to provide for the merger of corporations and limited partnerships into limited partnerships pursuant to the Nebraska Business Corporation Act; to eliminate a requirement that certain copies be certified; to change provisions relating to filings; to state the effect of appointing the Secretary of State as agent for service of process; to provide fees; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. That section 21-2070, Revised Statutes Supplement, 1989, be amended to read as follows:

21-2070. Any two or more domestic corporations or, subject to the Nebraska Uniform Limited Partnership Act, domestic limited partnerships or any combination of such entities may merge into one of such corporations or one of such limited partnerships pursuant to a plan of merger approved in the manner provided in the Nebraska Business Corporation Act.

The board of directors of each corporation shall, by resolution adopted by each such board, approve a plan of merger setting forth:

(1) The names of the corporations or limited partnerships proposing to merge and the name of the corporation or limited partnership into which they propose to merge, which is hereinafter designated as the surviving corporation or surviving limited partnership;

(2) The terms and conditions of the proposed merger;

(3) The manner and basis of converting the equity securities of each corporation or limited partnership into securities of the surviving corporation or surviving limited partnership or of any other corporation or limited partnership or, in whole or in part, into cash or other property and, if any equity securities of each merging corporation or limited

partnership are not to be converted solely into securities of the surviving entity, the cash, property, or securities of any other corporation or limited partnership which the holders of such equity securities are to receive in exchange for, or upon conversion of, such equity securities and the surrender of the certificates evidencing them, which cash, property, or securities of any other corporation or limited partnership may be in addition to or in lieu of securities of the surviving corporation or surviving limited partnership;

(4) A statement of any changes in the articles of incorporation or certificate of limited partnership of the surviving corporation or surviving limited partnership to be effected by such merger; and

(5) Such other provisions with respect to the proposed merger as are deemed necessary or desirable.

Sec. 2. That section 67-236, Revised Statutes Supplement, 1989, be amended to read as follows:

67-236. (a) Each limited partnership shall have and maintain in this state:

(1) An office which may but need not be a place of its business in this state; and

(2) An agent for service of process on the limited partnership, which agent must be an individual resident of this state, a domestic corporation, or a foreign corporation authorized to do business in this state.

(b) The agent for service of process may change his, her, or its address to another address in this state by paying a fee as set forth in section 67-293 and filing with the Secretary of State a certificate, executed by the agent, setting forth the names of the limited partnerships represented by the agent, the address at which the agent has maintained his, her, or its office as agent for each of such limited partnerships, and the new address to which the office will be changed on a given day, at which new address the agent will thereafter maintain his, her, or its office as agent for each of the limited partnerships recited in the certificate. Upon the filing of the certificate, the Secretary of State shall furnish to the agent a certified copy of the same, under his or her hand and seal of office; and thereafter or until further change of address, as authorized by law, the office in this state of the agent for service of process for each of the limited partnerships recited in the certificate shall be located at the new address. Filing of the certificate shall be deemed to be an amendment of the

certificate of limited partnership of each limited partnership affected thereby, and each such limited partnership shall not be required to take any further action to amend its certificate of limited partnership. Any agent filing a certificate under this section shall promptly, upon the filing, deliver a copy of such certificate to each limited partnership affected thereby.

(c) The agent of one or more limited partnerships may resign and appoint a successor agent by paying a fee as set forth in section 67-293 and filing a certificate with the Secretary of State, stating that the agent is resigning and the name and address of the successor agent. There shall be attached to such certificate a statement executed by each affected limited partnership ratifying and approving such change of agent. Upon such filing, the successor agent shall become the agent of such limited partnerships as have ratified and approved such substitution and the successor agent's address, as stated in such certificate, shall become the address of each such limited partnership's office in this state. The Secretary of State shall furnish to the successor agent a certified copy of the certificate of resignation. Filing of the certificate of resignation shall be deemed to be an amendment of the certificate of limited partnership of each limited partnership affected thereby, and each such limited partnership shall not be required to take any further action to amend its certificate of limited partnership.

(d) The agent of one or more limited partnerships may resign without appointing a successor agent by paying a fee as set forth in section 67-293 and filing a certificate with the Secretary of State stating that the agent is resigning as agent for the limited partnerships identified in the certificate, but such resignation shall not become effective until one hundred twenty days after the certificate is filed. There shall be attached to the certificate an affidavit of the agent, if an individual, or of the president, a vice president, or the secretary, if a corporation, that, at least thirty days prior to the date of filing of the certificate, notice of the resignation of the agent was sent by certified or registered mail to each limited partnership for which the agent is resigning as agent at the principal office thereof within or outside this state if known to such agent or, if not, to the last-known address of the attorney or other individual at whose request the agent was appointed for such

limited partnership. After receipt of the notice of the resignation of its agent, the limited partnership for which the agent was acting shall obtain and designate a new agent to take the place of the agent so resigning. If the limited partnership fails to obtain and designate a new agent prior to the expiration of the period of one hundred twenty days after the filing of the certificate of resignation, the certificate of such limited partnership shall be deemed to be canceled.

Sec. 3. That section 67-242, Revised Statutes Supplement, 1989, be amended to read as follows:

67-242. A certificate of limited partnership shall be canceled upon the dissolution and the completion of winding up of the partnership, ~~or~~ at any other time there are no limited partners, ~~; or upon a merger or consolidation as provided in subsection (b) of section 67-248-92.~~ A certificate of cancellation (1) shall be executed by all general partners or, if the general partners are not winding up the limited partnership's affairs, then by all liquidating trustees, except that if the limited partners are winding up the limited partnership's affairs, a certificate of cancellation shall be signed by a majority of the limited partners, (2) shall be filed in the office of the Secretary of State, and (3) shall set forth:

- (i) The name of the limited partnership;
- (ii) The date of filing of its certificate of limited partnership;
- (iii) The reason for filing the certificate of cancellation;
- (iv) The effective date, which shall be a date ~~or time~~ certain, of cancellation if it is not to be effective upon the filing of the certificate; and
- (v) Any other information the persons filing the certificate determine.

Sec. 4. That section 67-245, Revised Statutes Supplement, 1989, be amended to read as follows:

67-245. (a) Two signed copies of the certificate of limited partnership and of any certificates of amendment or cancellation, of any restated certificates of limited partnership, or of any judicial decree of amendment or cancellation shall be delivered to the Secretary of State. A person who executes a certificate as an agent, attorney in fact, or fiduciary need not exhibit evidence of his or her authority as a prerequisite to filing. Unless the Secretary of State finds that any certificate does not conform to law, upon receipt of all filing fees required by law he or she shall:

(1) Certify that the certificate of limited partnership, the certificate of amendment, the restated certificate of limited partnership, or the certificate of cancellation or any judicial decree of amendment or cancellation has been filed in his or her office by endorsing upon both duplicate originals the word Filed and the date ~~and hour~~ of the filing. This endorsement shall be conclusive of the date ~~and time~~ of its filing in the absence of proof of actual fraud;

(2) File one duplicate original in his or her office; and

(3) Return the other duplicate original to the person who filed it or his or her representative.

(b) Upon the later of the filing of a certificate of amendment or judicial decree of amendment in the office of the Secretary of State or the future effective date of a certificate of amendment or judicial decree of amendment, the certificate of limited partnership shall be amended as set forth in such certificate or decree, and upon the later of the filing of a certificate of cancellation or judicial decree of cancellation or upon the future effective date of a certificate of cancellation or a judicial decree of cancellation, the certificate of limited partnership shall be canceled.

(c) A fee as set forth in section 67-293 shall be paid at the time of the filing of a certificate of limited partnership, a certificate of amendment, or a certificate of cancellation.

(d) Any signature on any certificate authorized to be filed with the Secretary of State under any provision of the Nebraska Uniform Limited Partnership Act may be a facsimile.

Sec. 5. That section 67-248.01, Revised Statutes Supplement, 1989, be amended to read as follows:

67-248.01. (a) A limited partnership may, whenever desired, integrate into a single instrument all of the provisions of its certificate of limited partnership which are then in effect as a result of there having been filed with the Secretary of State one or more certificates or other instruments pursuant to sections 67-236 and 67-240 to 67-248, and it may at the same time further amend its certificate of limited partnership by adopting a restated certificate of limited partnership.

(b) If the restated certificate of limited partnership merely restates and integrates but does not further amend the initial certificate of limited

partnership as amended or supplemented pursuant to sections 67-236 and 67-240 to 67-248, it shall be specifically designated in its heading as a Restated Certificate of Limited Partnership together with such other words as the partnership may deem appropriate and shall be executed as provided in section 67-241 and filed with the Secretary of State as provided in section 67-245. If the restated certificate restates and integrates and also further amends in any respect the certificate of limited partnership as amended or supplemented, it shall be specifically designated in its heading as an Amended and Restated Certificate of Limited Partnership together with such other words as the partnership may deem appropriate and shall be executed by at least one general partner and by each other general partner designated in the amended and restated certificate of limited partnership as a new general partner and filed as provided in section 67-245.

(c) A restated certificate of limited partnership shall state, either in its heading or in an introductory paragraph, the limited partnership's present name, the name under which it was originally filed if it has been changed, the date of filing of its original certificate of limited partnership with the Secretary of State, and the future effective date ~~or time~~, which shall be a date ~~or time~~ certain, of the restated certificate if it is not to be effective upon the filing of the restated certificate. A restated certificate shall also state that it was duly executed and is being filed in accordance with this section. If it only restates and integrates and does not further amend the certificate of limited partnership as amended or supplemented and if there is no discrepancy between those provisions and the restated certificate, it shall state that fact as well.

(d) Upon the filing of the restated certificate of limited partnership with the Secretary of State or upon the future effective date ~~or time~~ of a restated certificate of limited partnership as provided for in the certificate, the initial certificate of limited partnership as amended or supplemented shall be superseded. The restated certificate of limited partnership, including any further amendments or changes made thereby, shall be the certificate of limited partnership of the limited partnership, but the original effective date of formation shall remain unchanged.

(e) Any amendment or change effected in connection with the restatement and integration of the certificate of limited partnership shall be subject to

any other provision of the Nebraska Uniform Limited Partnership Act which would apply if a separate certificate of amendment were filed to effect such amendment or change.

Sec. 6. That section 67-248.02, Revised Statutes Supplement, 1989, be amended to read as follows:

67-248.02. (a) Pursuant to an agreement, one or more domestic or foreign limited partnerships or corporations may merge into or consolidate with one or more domestic or foreign limited partnerships or corporations. If the resulting entity is a domestic corporation, the Nebraska Business Corporation Act shall govern the merger or consolidation. If the surviving or resulting entity is a corporation, the merger or consolidation shall be subject to section 21-2070 or 21-2071. If the surviving or resulting entity is not a domestic corporation, the board of directors of each domestic corporation party to such merger or consolidation shall, by resolution adopted by each such board, approve a plan of merger or plan of consolidation setting forth information substantially similar to that required by section 21-2070 or 21-2071. Unless otherwise provided in the partnership agreement, a plan of merger or plan of consolidation shall be approved by each domestic limited partnership which is to merge or consolidate (1) by all general partners and (2) by limited partners or, if there is more than one class or group of limited partners, then by limited partners of each class or group of limited partners, in either case, by limited partners who own more than fifty percent of the then current percentage or other interest in the profits of the domestic limited partnership owned by all of the limited partners or by the limited partners in each class or group, as appropriate. Notwithstanding prior approval, an agreement or plan of merger or agreement or plan of consolidation may be terminated or amended pursuant to a provision for such termination or amendment contained in the agreement or plan of merger or agreement or plan of consolidation.

(b) ~~A domestic limited partnership that is not the surviving or resulting entity in the merger or consolidation shall file a certificate of cancellation, which certificate shall have an effective date not later than the effective date of the merger or consolidation.~~

~~(c)~~ If the surviving or resulting entity is not a domestic limited partnership or corporation following a merger or consolidation of one or more domestic limited partnerships or corporations and one or

more foreign limited partnerships or corporations, the surviving or resulting entity shall comply with section 21-2076 and, ~~there shall be attached to the certificate of cancellation filed pursuant to section 67-242 for each such domestic limited partnership, a certificate shall be executed and filed in the office of the Secretary of State~~ by the surviving or resulting limited partnership or corporation stating that the surviving or resulting limited partnership or corporation agrees that it may be served with process within or outside this state in any proceeding in the courts of this state for the enforcement of any obligation of such former domestic limited partnership.

(c) ~~(d)~~ A merger or consolidation to which a domestic corporation is a party shall become effective as provided in section 21-2075. Any other merger or consolidation provided for in the Nebraska Uniform Limited Partnership Act shall become effective as provided in the agreement or plan of merger or consolidation. When such merger or consolidation has become effective, the terms of section 21-2075 shall apply if the surviving or resulting entity is a corporation and the following provisions shall apply if the surviving or resulting entity is a limited partnership:

(1) The several limited partnerships or corporations which are parties to the merger or consolidation agreement shall be a single limited partnership which, in the case of a merger, shall be that limited partnership designated in the merger agreement as the surviving limited partnership and, in the case of a consolidation, shall be the new limited partnership provided for in the consolidation agreement;

(2) The separate existence of all limited partnerships and corporations which are parties to the merger or consolidation agreement, except the surviving or new limited partnership, shall cease;

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

(4) The surviving or new limited partnership shall possess all the rights, privileges, immunities, and powers, of a public as well as of a private nature, of each of the merging or consolidating limited partnerships and, subject to the Nebraska Uniform Limited Partnership Act, each of the merging or

consolidating corporations. All property, real, personal, and mixed, all debts due on whatever account, all other things and causes of actions, and all and every other interest belonging to or due to any of the limited partnerships and corporations as merged or consolidated shall be taken and deemed to be transferred to and vested in the surviving or new limited partnership without further act and deed and shall thereafter be the property of the surviving or new limited partnership as they were of any of such merging or consolidating entities. The title to any real property or any interest in such property vested in any of such merging or consolidating entities shall not revert or be in any way impaired by reason of such merger or consolidation;

(5) Such surviving or new limited partnership shall be responsible and liable for all the liabilities and obligations of each of the limited partnerships or corporations so merged or consolidated. Any claim existing or action or proceeding pending by or against any of such limited partnerships or corporations may be prosecuted as if such merger or consolidation had not taken place, or such surviving or new limited partnership may be substituted in its place. Neither the rights of creditors nor any liens upon the property of any such limited partnerships or corporations shall be impaired by such merger or consolidation; and

(6) The equity securities of the corporation or corporations and limited partnership or limited partnerships party to the merger or consolidation that are, under the terms of the merger or consolidation, to be converted or exchanged shall cease to exist, and the holders of such equity securities shall thereafter be entitled only to the cash, property, or securities into which they shall have been converted in accordance with the terms of the merger or consolidation, subject to any rights under section 21-2079.

Sec. 7. That section 67-283, Revised Statutes Supplement, 1989, be amended to read as follows:

67-283. (a) A foreign limited partnership may register with the Secretary of State under any name, whether or not it is the name under which it is registered in its state or country of organization, that includes the words limited partnership or limited or the abbreviations L.P. or Ltd. and that could be registered by a domestic limited partnership. A foreign limited partnership may register under any name which is not distinguishable upon the records in the office of the Secretary of State from the name of any domestic or

foreign corporation or limited partnership reserved, registered, or organized under the laws of this state with the consent of the other corporation or limited partnership or with the transfer of such name by the other corporation or limited partnership, which written consent or transfer shall be filed with the Secretary of State.

(b) Each foreign limited partnership shall have and maintain in this state an agent for service of process on the limited partnership, which agent may be either an individual resident of this state, a domestic corporation, or a foreign corporation authorized to do business in this state. The appointment of the Secretary of State as agent for service of process pursuant to subdivision (a)(3) of section 67-281 shall not relieve a foreign limited partnership from its obligations pursuant to this section or from the consequences of failure to discharge its obligations under this section.

(c) An agent may change his, her, or its address for service of process to another address in this state by paying a fee as set forth in section 67-293 and filing with the Secretary of State a certificate, executed by the agent, setting forth the names of the foreign limited partnerships represented by the agent, the address at which such agent has maintained his, her, or its office as agent for each of such foreign limited partnerships, and the new address to which his, her, or its office will be changed on a given day, at which new address the agent will thereafter maintain his, her, or its office as agent for each of the foreign limited partnerships recited in the certificate. Upon the filing of the certificate, the Secretary of State shall furnish to the agent a ~~certified~~ copy of the same, ~~under his or her hand and seal of office~~; and thereafter or until further change of address, as authorized by law, the office of the agent in this state for each of the foreign limited partnerships recited in the certificate shall be located at the new address. Filing of the certificate shall be deemed to be an amendment of the registration of each foreign limited partnership affected thereby, and each such foreign limited partnership shall not be required to take any further action to amend its registration. Any agent filing a certificate under this section shall promptly, upon filing, deliver a copy of such certificate to each foreign limited partnership affected thereby.

(d) The agent of one or more foreign limited

partnerships may resign and appoint a successor agent by paying a fee as set forth in section 67-293 and filing a certificate with the Secretary of State, stating that the agent is resigning and the name and address of the successor agent. There shall be attached to such certificate a statement executed by each affected foreign limited partnership ratifying and approving such change of agent. Upon such filing, the successor agent shall become the agent of such foreign limited partnerships as have ratified and approved such substitution. The Secretary of State shall furnish to the successor agent a ~~certified~~ copy of the certificate of resignation. Filing of the certificate of resignation shall be deemed to be an amendment of the registration of each foreign limited partnership affected thereby, and each such foreign limited partnership shall not be required to take any further action to amend its registration.

(e) The agent of one or more foreign limited partnerships may resign without appointing a successor agent by paying a fee as set forth in section 67-293 and filing a certificate with the Secretary of State stating that the agent is resigning as agent for the foreign limited partnerships identified in the certificate, but such resignation shall not become effective until one hundred twenty days after the certificate is filed. There shall be attached to such certificate an affidavit of such agent, if an individual, or of the president, a vice president, or the secretary, if a corporation, that, at least thirty days prior to the date of filing of the certificate, notice of the resignation of such agent was sent, by certified or registered mail, to each foreign limited partnership for which such agent is resigning as agent, at the principal office thereof within or outside this state if known to such agent or, if not, to the last-known address of the attorney or other individual at whose request such agent was appointed for such foreign limited partnership. After receipt of the notice of the resignation of its agent, the foreign limited partnership for which such agent was acting shall obtain and designate a new agent to take the place of the agent so resigning. If such foreign limited partnership fails to obtain and designate a new agent prior to the expiration of the period of one hundred twenty days after the filing of the certificate of resignation, such foreign limited partnership shall not be permitted to do business in this state and its registration shall be deemed to be canceled.

Sec. 8. That section 67-293, Revised Statutes

Supplement, 1989, be amended to read as follows:

67-293. The filing fee for all filings pursuant to the Nebraska Uniform Limited Partnership Act, including amendments and name reservation, shall be ten dollars plus the recording fees set forth in subdivision (4) of section 33-101, except that the filing fee for filing a certificate of limited partnership pursuant to section 67-240 and for filing an application for registration as a foreign limited partnership pursuant to section 67-281 shall be two hundred dollars plus such recording fees. A fee of one dollar per page shall be paid for a certified copy of any document on file pursuant to the act. The fees for filings pursuant to the act shall be paid to the Secretary of State and by him or her remitted to the State Treasurer. The State Treasurer shall credit fifty percent of such fees to the General Fund and fifty percent of such fees to the Uniform Limited Partnership Cash Fund which is hereby created. Any money in the Uniform Limited Partnership Cash Fund available for investment shall be invested by the state investment officer pursuant to sections 72-1237 to 72-1276.

Sec. 9. That original sections 21-2070, 67-236, 67-242, 67-245, 67-248.01, 67-248.02, 67-283, and 67-293, Revised Statutes Supplement, 1989, are repealed.