

AMENDED IN SENATE JUNE 10, 1999

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 198

Introduced by Assembly Member Ackerman

January 21, 1999

An act to amend Sections 160, 168, 174.5, 175, 181, 1001, 1100, 1101, 1101.1, 1109, 1113, 1200, 1201, 6010, 6020, 6021, 6022, 8010, 8020, 8021, 8022, 9640, 12530, 12550, 12551, 12552, 15679.1, 16901, 16911, 16914, 16915, 16916, and 17600 of, and to add Sections 5063.5, 5064.5, 6019.1, 8019.1, 12242.5, 12242.6, and 12540.1 to, the Corporations Code, relating to legal entities.

LEGISLATIVE COUNSEL'S DIGEST

AB 198, as amended, Ackerman. Legal entities: organization and operation.

Existing provisions of law provide for the merger of 2 or more corporations.

This bill would authorize corporations, including nonprofit corporations and cooperative corporations to merge directly with any other business entity defined to mean a domestic or foreign limited liability company, limited partnership, general partnership, business trust, real estate investment trust, unincorporated association, other than a nonprofit association, or a domestic reciprocal insurer organized after 1974 to provide medical malpractice insurance. The bill would revise and recast other provisions, would enact related provisions with respect to merger authority that are applicable to partnerships, limited partnerships, and limited

liability companies, and would make various technical and other related changes.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 160 of the Corporations Code is
2 amended to read:

3 160. (a) Except as provided in subdivision (b),
4 “control” means the possession, direct or indirect, of the
5 power to direct or cause the direction of the management
6 and policies of a corporation.

7 (b) “Control” in Sections 175, 181, 1001, and 1200
8 means the ownership directly or indirectly of shares or
9 equity securities possessing more than 50 percent of the
10 voting power of a domestic corporation, a foreign
11 corporation, or an other business entity.

12 SEC. 2. Section 168 of the Corporations Code is
13 amended to read:

14 168. “Equity security” in Sections 181, 1001, 1113,
15 1200, and 1201 means any share or membership of a
16 domestic or foreign corporation; any partnership interest,
17 membership interest, or equivalent equity interest in an
18 other business entity; and any security convertible with
19 or without consideration into, or any warrant or right to
20 subscribe to or purchase, any of the foregoing.

21 SEC. 3. Section 174.5 of the Corporations Code is
22 amended to read:

23 174.5. “Other business entity” means a domestic or
24 foreign limited liability company, limited partnership,
25 general partnership, business trust, real estate
26 investment trust, unincorporated association (other than
27 a nonprofit association), or a domestic reciprocal insurer
28 organized after 1974 to provide medical malpractice
29 insurance as set forth in Article 16 (commencing with
30 Section 1550) of Chapter 3 of Part 2 of Division 1 of the
31 Insurance Code. As used herein, “general partnership”
32 means a “partnership” as defined in subdivision (7) of
33 Section 16101; “business trust” means a business



1 organization formed as a trust; “real estate investment
2 trust” means a “real estate investment trust” as defined
3 in subsection (a) of Section 856 of the Internal Revenue
4 Code of 1986, as amended; and “unincorporated
5 association” has the meaning set forth in Section 24000.

6 SEC. 4. Section 175 of the Corporations Code is
7 amended to read:

8 175. Except as used in Sections 1001, 1101, and 1113, a
9 “parent” of a specified corporation is an affiliate in
10 control (Section ~~160(b)~~ 160(a)) of that corporation
11 directly or indirectly through one or more
12 intermediaries. In Sections 1001, 1101, and 1113, “parent”
13 means a person in control (Section 160(b)) of a domestic
14 corporation, a foreign corporation, or an other business
15 entity.

16 SEC. 5. Section 181 of the Corporations Code is
17 amended to read:

18 181. “Reorganization” means either:

19 (a) A merger pursuant to Chapter 11 (commencing
20 with Section 1100) other than a short-form merger (a
21 “merger reorganization”).

22 (b) The acquisition by one domestic corporation,
23 foreign corporation, or other business entity in exchange,
24 in whole or in part, for its equity securities (or the equity
25 securities of a domestic corporation, a foreign
26 corporation, or an other business entity which is in control
27 of the acquiring entity) of equity securities of another
28 domestic corporation, foreign corporation, or other
29 business entity if, immediately after the acquisition, the
30 acquiring entity has control of the other entity (an
31 “exchange reorganization”).

32 (c) The acquisition by one domestic corporation,
33 foreign corporation, or other business entity in exchange
34 in whole or in part for its equity securities (or the equity
35 securities of a domestic corporation, a foreign
36 corporation, or an other business entity which is in control
37 of the acquiring entity) or for its debt securities (or debt
38 securities of a domestic corporation, foreign corporation,
39 or other business entity which is in control of the
40 acquiring entity) which are not adequately secured and



1 which have a maturity date in excess of five years after the
2 consummation of the reorganization, or both, of all or
3 substantially all of the assets of another domestic
4 corporation, foreign corporation, or other business entity
5 (a “sale-of-assets reorganization”).

6 SEC. 6. Section 1001 of the Corporations Code is
7 amended to read:

8 1001. (a) A corporation may sell, lease, convey,
9 exchange, transfer, or otherwise dispose of all or
10 substantially all of its assets when the principal terms are
11 approved by the board, and, unless the transaction is in
12 the usual and regular course of its business, approved by
13 the outstanding shares (Section 152), either before or
14 after approval by the board and before or after the
15 transaction.

16 A transaction constituting a reorganization (Section 181)
17 is subject to the provisions of Chapter 12 (commencing
18 with Section 1200) and not this section (other than
19 subdivision (d)).

20 (b) Notwithstanding approval of the outstanding
21 shares (Section 152), the board may abandon the
22 proposed transaction without further action by the
23 shareholders, subject to the contractual rights, if any, of
24 third parties.

25 (c) The sale, lease, conveyance, exchange, transfer or
26 other disposition may be made upon those terms and
27 conditions and for that consideration as the board may
28 deem in the best interests of the corporation. The
29 consideration may be money, securities, or other
30 property.

31 (d) If the acquiring party in a transaction pursuant to
32 subdivision (a) of this section or subdivision (g) of Section
33 2001 is in control of or under common control with the
34 disposing corporation, the principal terms of the sale
35 must be approved by at least 90 percent of the voting
36 power of the disposing corporation unless the disposition
37 is to a domestic or foreign corporation or other business
38 entity in consideration of the nonredeemable common
39 shares or nonredeemable equity securities of the
40 acquiring party or its parent.



1 (e) Subdivision (d) does not apply to any transaction
2 if the Commissioner of Corporations, the Commissioner
3 of Financial Institutions, the Insurance Commissioner or
4 the Public Utilities Commission has approved the terms
5 and conditions of the transaction and the fairness of those
6 terms and conditions pursuant to Section 25142, Section
7 696.5 of the Financial Code, Section 838.5 of the Insurance
8 Code, or Section 822 of the Public Utilities Code.

9 SEC. 7. Section 1100 of the Corporations Code is
10 amended to read:

11 1100. *Any two or more corporations may be merged*
12 *into one of those corporations.* A corporation may merge
13 with one or more domestic corporations (Section 167),
14 foreign corporations (Section 171), or other business
15 entities (Section 174.5) pursuant to this chapter. Mergers
16 in which a foreign corporation but no other business
17 entity is a constituent party are governed by Section 1108,
18 and mergers in which an other business entity is a
19 constituent party are governed by Section 1113.

20 SEC. 8. Section 1101 of the Corporations Code is
21 amended to read:

22 1101. The board of each corporation which desires to
23 merge shall approve an agreement of merger. The
24 constituent corporations shall be parties to the agreement
25 of merger and other persons, including a parent party
26 (Section 1200), may be parties to the agreement of
27 merger. The agreement shall state all of the following:

- 28 (a) The terms and conditions of the merger.
- 29 (b) The amendments, subject to Sections 900 and 907,
30 to the articles of the surviving corporation to be effected
31 by the merger, if any. If any amendment changes the
32 name of the surviving corporation the new name may be
33 the same as or similar to the name of a disappearing
34 domestic or foreign corporation, subject to subdivision
35 (b) of Section 201.
- 36 (c) The name and place of incorporation of each
37 constituent corporation and which of the constituent
38 corporations is the surviving corporation.
- 39 (d) The manner of converting the shares of each of the
40 constituent corporations into shares or other securities of



1 the surviving corporation and, if any shares of any of the
2 constituent corporations are not to be converted solely
3 into shares or other securities of the surviving
4 corporation, the cash, rights, securities, or other property
5 which the holders of those shares are to receive in
6 exchange for the shares, which cash, rights, securities, or
7 other property may be in addition to or in lieu of shares
8 or other securities of the surviving corporation, or that
9 the shares are canceled without consideration.

10 (e) Other details or provisions as are desired, if any,
11 including, without limitation, a provision for the payment
12 of cash in lieu of fractional shares or for any other
13 arrangement with respect thereto consistent with the
14 provisions of Section 407.

15 Each share of the same class or series of any constituent
16 corporation (other than the cancellation of shares held by
17 a constituent corporation or its parent or a wholly owned
18 subsidiary of either in another constituent corporation)
19 shall, unless all shareholders of the class or series consent
20 and except as provided in Section 407, be treated equally
21 with respect to any distribution of cash, rights, securities,
22 or other property. Notwithstanding subdivision (d),
23 except in a short-form merger, and in the merger of a
24 corporation into its subsidiary in which it owns at least 90
25 percent of the outstanding shares of each class, the
26 nonredeemable common shares *or nonredeemable*
27 *equity interests* of a constituent corporation may be
28 converted only into nonredeemable common shares of
29 the surviving corporation *party* or a parent party if a
30 constituent corporation or its parent owns, directly or
31 indirectly, *prior to the merger* shares of another
32 constituent corporation representing more than 50
33 percent of the voting power of the other constituent
34 corporation prior to the merger, unless all of the
35 shareholders of the class consent and except as provided
36 in Section 407.

37 SEC. 9. Section 1101.1 of the Corporations Code is
38 amended to read:

39 1101.1. Subdivision (c) of Section 1113 and the last
40 two sentences of Section 1101 do not apply to any



1 transaction if the Commissioner of Corporations, the
2 Commissioner of Financial Institutions, the Insurance
3 Commissioner or, the Public Utilities Commission has
4 approved the terms and conditions of the transaction and
5 the fairness of ~~such~~ those terms and conditions pursuant
6 to Section 25142 or Section 696.5, 5750, or 5802 of the
7 Financial Code, Section 838.5 of the Insurance Code, or
8 Section 822 of the Public Utilities Code.

9 *SEC. 9.5. Section 1109 of the Corporations Code is*
10 *amended to read:*

11 1109. Whenever a domestic or foreign corporation or
12 domestic or foreign other business entity having any real
13 property in this state merges or consolidates with another
14 *domestic or foreign* corporation or ~~with an~~ other business
15 entity pursuant to the laws of this state or of the state or
16 place in which any constituent ~~corporation or constituent~~
17 ~~other business entity~~ *party to the merger* was
18 incorporated or organized, and the laws of the state or
19 place of incorporation or organization (including this
20 state) of any disappearing ~~corporation or disappearing~~
21 ~~other business entity~~ *party to the merger* provide
22 substantially that the making and filing of the agreement
23 of merger or consolidation or certificate of ownership or
24 certificate of merger vests in the surviving or
25 consolidated ~~corporation or surviving other business~~
26 ~~entity~~ *party to the merger* all the real property of any
27 disappearing corporation or disappearing other business
28 entity *party to the merger*, the filing for record in the
29 office of the county recorder of any county in this state in
30 which any of the real property of that disappearing
31 corporation or disappearing other business entity *party to*
32 *the merger* is located of a copy of the agreement of
33 merger or consolidation or certificate of ownership or
34 certificate of merger, certified by the Secretary of State
35 or an authorized public official of the state or place
36 pursuant to the laws of which the merger or consolidation
37 is effected, shall evidence record ownership in the
38 surviving or consolidated ~~corporation or surviving other~~
39 ~~business entity~~ *party to the merger*, of all interest of the
40 disappearing ~~corporation or disappearing other business~~



1 ~~entity party to the merger~~ in and to the real property
2 located in that county.

3 SEC. 10. Section 1113 of the Corporations Code is
4 amended to read:

5 1113. (a) Any one or more corporations may merge
6 with one or more other business entities (Section 174.5).
7 One or more domestic corporations (Section 167) not
8 organized under this division and one or more foreign
9 corporations (Section 171) may be parties to the merger.
10 Notwithstanding the provisions of this section, the
11 merger of any number of corporations with any number
12 of other business entities may be effected only if:

13 (1) In a merger in which a domestic corporation not
14 organized under this division or a domestic other business
15 entity is a party, it is authorized by the laws under which
16 it is organized to effect the merger.

17 (2) In a merger in which a foreign corporation is a
18 party, it is authorized by the laws under which it is
19 organized to effect ~~that~~ the merger.

20 (3) In a merger in which a foreign other business
21 ~~entity is the surviving party, the laws of the jurisdiction~~
22 ~~under which it is organized authorize the merger.~~

23 (4) ~~In a merger in which a foreign other business~~
24 ~~entity is a disappearing party, it is not prohibited by the~~
25 ~~laws under which it is organized from effecting that~~
26 ~~merger. entity is a party, it is authorized by the laws under~~
27 ~~which it is organized to effect the merger.~~

28 (b) Each corporation and each other party which
29 desires to merge shall approve, and shall be a party to, an
30 agreement of merger. Other persons, including a parent
31 party (Section 1200), may be parties to the agreement of
32 merger. The board of each corporation which desires to
33 merge, and, if required the shareholders, shall approve
34 the agreement of merger. The agreement of merger shall
35 be approved on behalf of each party by those persons
36 required to approve the merger by the laws under which
37 it is organized. The agreement of merger shall state:

38 (1) The terms and conditions of the merger.



1 (2) The name and place of incorporation or
2 organization of each party *to the merger and the identity*
3 *of the surviving party.*

4 (3) The amendments, if any, subject to Sections 900
5 and 907, to the articles of the surviving corporation, if
6 applicable, to be effected by the merger. If any
7 amendment changes the name of the surviving
8 corporation, if applicable, the new name may be, subject
9 to subdivision (b) of Section 201, the same as or similar to
10 the name of a disappearing party to the merger.

11 (4) The manner of converting the shares of each
12 constituent corporation into shares, interests, or other
13 securities of the surviving party. If any shares of any
14 constituent corporation are not to be converted solely
15 into shares, interests or other securities of the surviving
16 party, the agreement of merger shall state (i) the cash,
17 rights, securities, or other property which the holders of
18 those shares are to receive in exchange for the shares,
19 which cash, rights, securities, or other property may be in
20 addition to or in lieu of shares, interests or other securities
21 of the surviving party, or (ii) that the shares are canceled
22 without consideration.

23 (5) Any other details or provisions required by the
24 laws under which any party to the merger is organized,
25 including, if a public benefit corporation or a religious
26 corporation is a party to the merger, Section 6019.1, or, if
27 a mutual benefit corporation is a party to the merger,
28 Section 8019.1, or, if a consumer cooperative corporation
29 is a party to the merger, Section 12540.1, or, if a domestic
30 limited partnership is a party to the merger, Section
31 15678.2, or, if a domestic partnership is a party to the
32 merger, Section 16911, or, if a domestic limited liability
33 company is a party to the merger, Section 17551.

34 (6) Any other details or provisions as are desired,
35 including, without limitation, a provision for the payment
36 of cash in lieu of fractional shares or for any other
37 arrangement with respect thereto consistent with the
38 provisions of Section 407.

39 (c) Each share of the same class or series of any
40 constituent corporation (other than the cancellation of



1 shares owned, ~~directly or indirectly~~, by a party to the
2 merger or its parent, or a wholly owned subsidiary of
3 either, in another constituent corporation) shall, unless
4 all shareholders of the class or series consent and except
5 as provided in Section 407, be treated equally with
6 respect to any distribution of cash, rights, securities, or
7 other property. Notwithstanding paragraph (4) of
8 subdivision (b), the nonredeemable common shares of a
9 constituent corporation may be converted only into
10 nonredeemable common shares of a surviving
11 corporation or a parent party (Section 1200) or
12 nonredeemable equity securities of a surviving party
13 other than a corporation if ~~a~~ *another* party to the merger
14 or its parent owns, directly or indirectly, prior to the
15 merger shares of that ~~constituent~~ corporation
16 representing more than 50 percent of the voting power
17 *of that corporation*, unless all of the ~~holders of the class or~~
18 *series shareholders of the class* consent and except as
19 provided in Section 407.

20 (d) Notwithstanding its prior approval, an agreement
21 of merger may be amended prior to the filing of the
22 agreement of merger or the certificate of merger, as is
23 applicable, if the amendment is approved by the board of
24 each constituent corporation and, if the amendment
25 changes any of the principal terms of the agreement, by
26 the outstanding shares (Section 152), if required by
27 Chapter 12 (commencing with Section 1200), in the same
28 manner as the original agreement of merger. If the
29 agreement of merger as so amended and approved is also
30 approved by each of the other parties to the agreement
31 of merger, the agreement of merger as so amended shall
32 then constitute the agreement of merger.

33 (e) The board of a constituent corporation may, in its
34 discretion, abandon a merger, subject to the contractual
35 rights, if any, of third parties, including other parties to
36 the agreement of merger, without further approval by
37 the outstanding shares (Section 152), at any time before
38 the merger is effective.

39 (f) Each constituent corporation shall sign the
40 agreement of merger by its chairperson of the board,



1 president or a vice president and also by its secretary or
2 an assistant secretary acting on behalf of their respective
3 corporations.

4 (g) (1) If the surviving party is a corporation *or a*
5 *foreign corporation*, or if a public benefit corporation
6 (Section 5060), a mutual benefit corporation (Section
7 5059), a religious corporation (Section 5061), or a
8 corporation organized under the Consumer Cooperative
9 Corporation Law (Section 12200) is a party to the merger,
10 after required approvals of the merger by each
11 constituent corporation through approval of the board
12 (Section 151) and any approval of the outstanding shares
13 (Section 152) required by Chapter 12 (commencing with
14 Section 1200) and by the other parties to the merger, the
15 surviving party shall file a copy of the agreement of
16 merger with an officers' certificate of each constituent
17 domestic and foreign corporation attached stating the
18 total number of outstanding shares or membership
19 interests of each class entitled to vote on the merger (and
20 identifying any other person or persons whose approval
21 is required), that the ~~principal terms of the agreement in~~
22 ~~the form attached~~ *agreement of merger in the form*
23 *attached or its principal terms, as required*, were
24 approved by that corporation by a vote of a number of
25 shares or membership interests of each class which
26 equaled or exceeded the vote required, specifying each
27 class entitled to vote and the percentage vote required of
28 each class and, if applicable, by such other person or
29 persons whose approval is required, or that the merger
30 agreement was entitled to be and was approved by the
31 board alone (as provided in Section 1201, in the case of
32 corporations subject to that section). *If equity securities*
33 *of a parent party (Section 1200) are to be issued in the*
34 *merger, the officer's certificate of that controlled party*
35 *shall state either that no vote of the shareholders of the*
36 *parent party was required or that the required vote was*
37 *obtained*. In lieu of an officers' certificate, a certificate of
38 merger, on a form prescribed by the Secretary of State,
39 shall be filed for each constituent other business entity.
40 The certificate of merger shall be executed and



1 ~~acknowledged by the constituent other business entity by~~
2 ~~those persons required or authorized to execute the~~
3 ~~certificate of merger by the laws under which the other~~
4 ~~business entity is organized~~ *each domestic constituent*
5 *limited liability company by all of the managers of the*
6 *limited liability company (unless a lesser number is*
7 *specified in its articles or organization or operating*
8 *agreement) and by each domestic constituent limited*
9 *partnership by all general partners (unless a lesser*
10 *number is provided in its certificate of limited*
11 *partnership or partnership agreement) and by each*
12 *domestic constituent general partnership by two*
13 *partners (unless a lesser number is provided in its*
14 *partnership agreement) and by each foreign constituent*
15 *limited liability company by one or more managers and*
16 *by each foreign constituent general partnership or*
17 *foreign constituent limited partnership by one or more*
18 *general partners, and by each constituent reciprocal*
19 *insurer by the chairperson of the board, president, or vice*
20 *president, and by the secretary or assistant secretary, or,*
21 *if a constituent reciprocal insurer has not appointed those*
22 *officers, by the chairperson of the board, president, or*
23 *vice president, and by the secretary or assistant secretary*
24 *of the constituent reciprocal insurer's attorney-in-fact,*
25 *and by each other party to the merger by those persons*
26 *required or authorized to execute the certificate of*
27 *merger by the laws under which that party is organized,*
28 *specifying for that party the provision of law or other basis*
29 *for the authority of the signing persons. The certificate of*
30 *merger shall set forth, if a vote of the shareholders,*
31 *members, partners, or other holders of interests of the*
32 *constituent other business entity was required, a*
33 *statement setting forth the total number of outstanding*
34 *interests of each class entitled to vote on the merger and*
35 *that the agreement of merger in the form attached or its*
36 *principal terms, as required, were approved by a vote of*
37 *the number of interests of each class which equaled or*
38 *exceeded the vote required, specifying each class entitled*
39 *to vote and the percentage vote required of each class,*
40 *and any other information required to be set forth under*



1 the laws under which the constituent other business
2 entity is organized, including, if a domestic limited
3 partnership is a party to the merger, subdivision (a) of
4 Section 15678.4, if a domestic partnership is a party to the
5 merger, subdivision (b) of Section 16915, and, if a
6 domestic limited liability company is a party to the
7 merger, subdivision (a) of Section 17552. ~~If equity~~
8 ~~securities of a parent party (Section 1200) of a constituent~~
9 ~~corporation are to be issued in the merger, the officers'~~
10 ~~certificate of that constituent corporation shall state~~
11 ~~either that no vote of the shareholders of the parent party~~
12 ~~was required or that the required vote was obtained. The~~
13 *The certificate of merger for each constituent foreign*
14 *other business entity, if any, shall also set forth the*
15 *statutory or other basis under which that foreign other*
16 *business entity is authorized by the laws under which it*
17 *is organized to effect the merger. The merger and any*
18 *amendment of the articles of the surviving corporation,*
19 *if applicable, contained in the agreement of merger shall*
20 ~~thereupon be effective~~ *be effective upon filing of the*
21 *agreement of merger with an officer's certificate of each*
22 *constituent domestic and foreign corporation and a*
23 *certificate of merger for each constituent other business*
24 *entity, subject to subdivision (c) of Section 110 and*
25 *subject to the provisions of subdivision (j), and the several*
26 *parties thereto shall be one—corporation entity. The*
27 *agreement of merger shall not be filed, however, until*
28 *there has been filed by or on behalf of each party to the*
29 *merger taxed under the Bank and Corporation Tax Law,*
30 *the existence of which is terminated by the merger, the*
31 *certificate of satisfaction of the Franchise Tax Board that*
32 *all taxes imposed by that law have been paid or secured.*
33 *If a domestic reciprocal insurer organized after 1974 to*
34 *provide medical malpractice insurance is a party to the*
35 *merger, the agreement of merger or certificate of merger*
36 *shall not be filed until there has been filed the certificate*
37 *issued by the Insurance Commissioner approving the*
38 *merger pursuant to Section 1555 of the Insurance Code.*
39 The Secretary of State may certify a copy of the



1 agreement of merger separate from the officers'
2 certificates and certificates of merger attached thereto.
3 (2) If the surviving entity is an other business entity,
4 and no public benefit corporation (Section 5060), mutual
5 benefit corporation (Section 5059), religious corporation
6 (Section 5061), or corporation organized under the
7 Consumer Cooperative Corporation Law (Section 12200)
8 is a party to the merger, after required approvals of the
9 merger by each constituent corporation through
10 approval of the board (Section 151) and any approval of
11 the outstanding shares (Section 152) required by Chapter
12 12 (commencing with Section 1200) and by the other
13 parties to the merger, the parties to the merger shall file
14 a certificate of merger in the office of, and on a form
15 prescribed by, the Secretary of State. The certificate of
16 merger shall be executed and acknowledged by each
17 constituent *domestic and foreign* corporation by its
18 chairperson of the board, president or a vice president
19 and also by its secretary or an assistant secretary and by
20 each domestic constituent limited liability company by all
21 of the managers of the limited liability company (unless
22 a lesser number is specified in its articles of organization
23 or ~~the~~ operating agreement) and by each domestic
24 constituent limited partnership by all general partners
25 (unless a lesser number is provided in its certificate of
26 limited partnership *or partnership agreement*) and by
27 each domestic constituent general partnership by two
28 partners (unless a lesser number is provided in its
29 partnership agreement) and by each foreign constituent
30 limited liability company by one or more managers and
31 by each foreign constituent *general partnership or*
32 *foreign constituent* limited partnership by one or more
33 general partners, and by each constituent reciprocal
34 insurer by the chairperson of the board, president, or vice
35 president, and by the secretary or assistant secretary, or,
36 if a constituent reciprocal insurer has not appointed ~~such~~
37 *those* officers, by the chairperson of the board, president,
38 or vice president, and by the secretary or assistant
39 secretary of the constituent reciprocal insurer's
40 attorney-in-fact. The certificate of merger shall be signed



1 by each other party to the merger by those persons
2 required or authorized to execute the certificate of
3 merger by the laws under which that party is organized,
4 specifying for that party the provision of law or other basis
5 for the authority of the signing persons. The certificate of
6 merger shall set forth all of the following:

7 ~~(A) The names and the Secretary of State's file~~
8 ~~numbers, if any, of each~~

9 *(A) The name, place of incorporation or organization,*
10 *and the Secretary of State's file number, if any, of each*
11 *party to the merger, separately identifying the*
12 *disappearing parties and the surviving party.*

13 (B) If the approval of the outstanding shares of a
14 constituent corporation was required by Chapter 12
15 (commencing with Section 1200), a statement setting
16 forth the total number of outstanding shares of each class
17 entitled to vote on the merger and that the principal
18 terms of the agreement of merger were approved by a
19 vote of the number of shares of each class entitled to vote
20 and the percentage vote required of each class.

21 (C) The future effective date or time, not more than
22 90 days subsequent to the date of filing of the merger, if
23 the merger is not to be effective upon the filing of the
24 certificate of merger with the office of the Secretary of
25 State.

26 (D) A statement, by each party to the merger which
27 is a domestic corporation not organized under this
28 division, a foreign corporation, or an other ~~business~~
29 ~~entity, that the laws under which it is organized either~~
30 ~~authorize the merger or do not prohibit the merger, as~~
31 ~~required by subdivision (a):~~ *business entity, of the*
32 *statutory or other basis under which that party is*
33 *authorized by the laws under which it is organized to*
34 *effect the merger.*

35 (E) Any other information required to be stated in the
36 certificate of merger by the laws under which each party
37 to the merger is organized, including, if a domestic
38 limited liability company is a party to the merger,
39 subdivision (a) of Section 17552, if a domestic partnership
40 is a party to the merger, subdivision (b) of Section 16915,



1 and, if a domestic limited partnership is a party to the
2 merger, subdivision (a) of Section 15678.4.

3 *(F) Any other details or provisions that may be*
4 *desired.*

5 Unless a future effective date or time is provided in a
6 certificate of merger, in which event the merger shall be
7 effective at that future effective date or time, a merger
8 shall be effective upon the filing of the certificate of
9 merger in the office of the Secretary of State and the
10 several parties thereto shall be one entity. The certificate
11 of merger shall not be filed, however, until there has been
12 filed by or on behalf of each party to the merger that is
13 taxed under the Bank and Corporation Tax Law, the
14 existence of which is terminated by the merger, the
15 certificate of satisfaction of the Franchise Tax Board that
16 all taxes imposed by the Bank and Corporation Tax Law
17 have been paid or secured. The surviving other business
18 entity shall keep a copy of the agreement of merger at its
19 principal place of business which, for purposes of this
20 subdivision, shall be the office referred to in Section 17057
21 if a domestic limited liability company, at the business
22 address specified in paragraph (5) of subdivision (a) of
23 Section 17552 if a foreign limited liability company, at the
24 office referred to in subdivision (a) of Section 16403 if a
25 domestic general partnership, at the business address
26 specified in subdivision (f) of Section 16911 if a foreign
27 partnership, at the office referred to in subdivision (a) of
28 Section 15614 if a domestic limited partnership, or at the
29 business address specified in paragraph (5) of subdivision
30 (a) of Section 15678.4 if a foreign limited partnership.
31 Upon the request of a holder of equity securities of a party
32 to the merger, a person with authority to do so on behalf
33 of the surviving other business entity shall promptly
34 deliver to that holder, a copy of the agreement of merger.
35 A waiver by that holder of the rights provided in the
36 foregoing sentence shall be unenforceable. If a domestic
37 reciprocal insurer organized after 1974 to provide
38 medical malpractice insurance is a party to the merger
39 the agreement of merger or certificate of merger shall
40 not be filed until there has been filed the certificate issued



1 by the Insurance Commissioner approving the merger in
2 accordance with Section 1555 of the Insurance Code.

3 (h) (1) A copy of an agreement of merger certified on
4 or after the effective date by an official having custody
5 thereof has the same force in evidence as the original and,
6 except as against the state, is conclusive evidence of the
7 performance of all conditions precedent to the merger,
8 the existence on the effective date of the surviving party
9 to the merger and the performance of the conditions
10 necessary to the adoption of any amendment to the
11 articles, if applicable, contained in the agreement of
12 merger.

13 (2) For all purposes for a merger in which the
14 surviving entity is a domestic other business entity and
15 the filing of a certificate of merger is required by
16 paragraph (2) of subdivision (g), a copy of the certificate
17 of merger duly certified by the Secretary of State is
18 conclusive evidence of the merger of the constituent
19 corporations, either by themselves or together with the
20 other parties to the merger, into the surviving other
21 business entity.

22 (i) (1) Upon a merger pursuant to this section, the
23 separate existences of the disappearing parties to the
24 merger cease and the surviving party to the merger shall
25 succeed, without other transfer, to all the rights and
26 property of each of the disappearing parties to the
27 merger and shall be subject to all the debts and liabilities
28 of each in the same manner as if the surviving party to the
29 merger had itself incurred them.

30 (2) All rights of creditors and all liens upon the
31 property of each of the constituent corporations and
32 other parties to the merger shall be preserved
33 unimpaired, provided that those liens upon property of
34 a disappearing party shall be limited to the property
35 affected thereby immediately prior to the time the
36 merger is effective.

37 (3) Any action or proceeding pending by or against
38 any disappearing corporation or disappearing party to
39 the merger may be prosecuted to judgment, which shall



1 bind the surviving party, or the surviving party may be
2 proceeded against or substituted in its place.

3 (4) If a limited partnership or a general partnership is
4 a party to the merger, nothing in this section is intended
5 to affect the liability a general partner of a disappearing
6 limited partnership or general partnership may have in
7 connection with the debts and liabilities of the
8 disappearing limited partnership *or general partnership*
9 existing prior to the time the merger is effective.

10 (j) (1) The merger of domestic corporations with
11 foreign corporations or foreign other business entities in
12 a merger in which one or more other business entities is
13 a party shall comply with subdivision (a) and this
14 subdivision.

15 (2) If the surviving party is a domestic corporation or
16 domestic other business entity, the merger proceedings
17 with respect to that party and any domestic disappearing
18 corporation shall conform to the provisions of this section.
19 If the surviving party is a foreign corporation or foreign
20 other business entity, then, subject to the requirements
21 of subdivision (c), and of Section 407 and Chapter 12
22 (commencing with Section 1200) and Chapter 13
23 (commencing with Section 1300), and, if applicable,
24 corresponding provisions of the Nonprofit Corporation
25 Law or the Consumer Cooperative Corporation Law,
26 with respect to any domestic constituent corporations,
27 Chapter 13 (commencing with Section 17600) of Title 2.5
28 with respect to any domestic constituent limited liability
29 companies, Article 6 (commencing with Section 16601)
30 of Chapter 5 of Title 2 with respect to any domestic
31 constituent general partnerships, and Article 7.6
32 (commencing with Section 15679.1) of Chapter 3 of Title
33 2 with respect to any domestic constituent limited
34 partnerships, the merger proceedings may be in
35 accordance with the laws of the state or place of
36 incorporation or organization of the surviving party.

37 (3) If the surviving party is a domestic corporation or
38 domestic other business entity, the certificate of merger
39 or the agreement of merger with attachments shall be
40 filed as provided in subdivision (g) and thereupon,



1 subject to subdivision (c) of Section 110 or paragraph (2)
2 of subdivision (g), as is applicable, the merger shall be
3 effective as to each domestic ~~party~~ *constituent*
4 *corporation and domestic constituent other business*
5 *entity.*

6 (4) If the surviving party is a foreign corporation or
7 foreign other business entity, the merger shall become
8 effective in accordance with the law of the jurisdiction in
9 which the surviving party is organized, but, except as
10 provided in paragraph (5), the merger shall be effective
11 as to any domestic disappearing corporation as of the time
12 of effectiveness in the foreign jurisdiction upon the filing
13 in this state of a copy of the agreement of merger with an
14 officers' certificate of each constituent foreign and
15 domestic corporation and a certificate of merger of each
16 constituent other ~~party~~ *business entity* attached, which
17 officers' certificates and certificates of merger shall
18 conform to the requirements of paragraph (1) of
19 subdivision (g). If one or more domestic other business
20 entities is a disappearing party in a merger pursuant to
21 this subdivision in which a foreign other business entity
22 is the surviving entity, a certificate of merger required by
23 the laws under which that domestic other business entity
24 is organized, including subdivision (a) of Section 15678.4,
25 subdivision (b) of Section 16915, or subdivision (a) of
26 Section 17552, as is applicable, shall also be filed at the
27 same time as the filing of the agreement of merger.

28 (5) If the date of the filing in this state pursuant to this
29 subdivision is more than six months after the time of the
30 effectiveness in the foreign jurisdiction, or if the powers
31 of a domestic disappearing corporation are suspended at
32 the time of effectiveness in the foreign jurisdiction, the
33 merger shall be effective as to the domestic disappearing
34 corporation as of the date of filing in this state.

35 (6) In a merger described in paragraph (3) or (4),
36 each foreign disappearing corporation that is qualified for
37 the transaction of intrastate business shall automatically
38 by the filing pursuant to this subdivision surrender its
39 right to transact intrastate business as of the date of filing
40 in this state or, if later, the effective date of the merger.



1 With respect to each foreign disappearing other business
2 entity previously registered for the transaction of
3 intrastate business in this state, the filing of the
4 agreement of merger or certificate of merger, as is
5 applicable, pursuant to this subdivision automatically has
6 the effect of a cancellation of registration for that foreign
7 other business entity as of the date of filing in this state or,
8 if later, the effective date of the merger, without the
9 necessity of the filing of a certificate of cancellation.

10 (7) A certificate of satisfaction of the Franchise Tax
11 Board for each disappearing party to the merger shall be
12 filed when required by subdivision (g) or when required
13 by Section 23334 of the Revenue and Taxation Code.

14 SEC. 11. Section 1200 of the Corporations Code is
15 amended to read:

16 1200. A reorganization (Section 181) or a share
17 exchange tender offer (Section 183.5) shall be approved
18 by the board of:

19 (a) Each constituent corporation in a merger
20 reorganization;

21 (b) The acquiring corporation in an exchange
22 reorganization;

23 (c) The acquiring corporation and the corporation
24 whose property and assets are acquired in a sale-of-assets
25 reorganization;

26 (d) The acquiring corporation in a share exchange
27 tender offer (Section 183.5); and

28 (e) The corporation in control of any constituent or
29 acquiring *domestic or foreign* corporation or other
30 business entity under subdivision (a), (b) or (c) and
31 whose equity securities are issued, transferred, or
32 exchanged in there organization (a “parent party”).

33 SEC. 12. Section 1201 of the Corporations Code is
34 amended to read:

35 1201. (a) The principal terms of a reorganization
36 shall be approved by the outstanding shares (Section 152)
37 of each class of each corporation the approval of whose
38 board is required under Section 1200, except as provided
39 in subdivision (b) and except that (unless otherwise
40 provided in the articles) no approval of any class of



1 outstanding preferred shares of the surviving or
2 acquiring corporation or parent party shall be required if
3 the rights, preferences, privileges and restrictions
4 granted to or imposed upon ~~such~~ *that* class of shares
5 remain unchanged (subject to the provisions of
6 subdivision (c)). For the purpose of this subdivision, two
7 classes of common shares differing only as to voting rights
8 shall be considered as a single class of shares.

9 (b) No approval of the outstanding shares (Section
10 152) is required by subdivision (a) in the case of any
11 corporation if that corporation, or its shareholders
12 immediately before the reorganization, or both, shall own
13 (immediately after the reorganization) equity securities,
14 other than any warrant or right to subscribe to or
15 purchase those equity securities, of the surviving or
16 acquiring corporation or a parent party (subdivision (d)
17 of Section 1200) possessing more than five-sixths of the
18 voting power of the surviving or acquiring corporation or
19 parent party. In making the determination of ownership
20 by the shareholders of a corporation, immediately after
21 the reorganization, of equity securities pursuant to the
22 preceding sentence, equity securities which they owned
23 immediately before the reorganization as shareholders of
24 another party to the transaction shall be disregarded. For
25 the purpose of this section only, the voting power of a
26 corporation shall be calculated by assuming the
27 conversion of all equity securities convertible
28 (immediately or at some future time) into shares entitled
29 to vote but not assuming the exercise of any warrant or
30 right to subscribe to or purchase ~~such~~ *those* shares.

31 (c) Notwithstanding subdivision (b), the principal
32 terms of a reorganization shall be approved by the
33 outstanding shares (Section 152) of the surviving
34 corporation in a merger reorganization if any
35 amendment is made to its articles which would otherwise
36 require ~~such~~ *that* approval.

37 (d) Notwithstanding subdivision (b), the principal
38 terms of a reorganization shall be approved by the
39 outstanding shares (Section 152) of any class of a
40 corporation which is a party to a merger or sale-of-assets



1 reorganization if holders of shares of that class receive
2 shares of the surviving or acquiring corporation or parent
3 party having different rights, preferences, privileges or
4 restrictions than those surrendered. Shares in a foreign
5 corporation received in exchange for shares in a domestic
6 corporation have different rights, preferences, privileges
7 and restrictions within the meaning of the preceding
8 sentence.

9 (e) Notwithstanding subdivisions (a) and (b), the
10 principal terms of a reorganization shall be approved by
11 the affirmative vote of at least two-thirds of each class of
12 the outstanding shares of any close corporation if the
13 reorganization would result in their receiving shares of a
14 corporation which is not a close corporation. However,
15 the articles may provide for a lesser vote, but not less than
16 a majority of the outstanding shares of each class.

17 (f) Notwithstanding subdivisions (a) and (b), the
18 principal terms of a reorganization shall be approved by
19 the outstanding shares (Section 152) of any class of a
20 corporation which is a party to a merger reorganization
21 if holders of shares of that class receive interests of a
22 surviving other business entity in the merger.

23 (g) Notwithstanding subdivisions (a) and (b), the
24 principal terms of a reorganization shall be approved by
25 all shareholders of any class or series if, as a result of the
26 reorganization, the holders of that class or series become
27 personally liable for any obligations of a party to the
28 reorganization, unless all holders of that class or series
29 have the dissenters' rights provided in Chapter 13
30 (commencing with Section 1300).

31 (h) Any approval required by this section may be
32 given before or after the approval by the board.
33 Notwithstanding approval required by this section, the
34 board may abandon the proposed reorganization without
35 further action by the shareholders, subject to the
36 contractual rights, if any, of third parties.

37 *SEC. 12.5. Section 5063.5 is added to the Corporations*
38 *Code, to read:*

39 *5063.5. "Other business entity" means a domestic or*
40 *foreign limited liability company, limited partnership,*



1 *general partnership, business trust, real estate*
2 *investment trust, unincorporated association (other than*
3 *a nonprofit association), or a domestic reciprocal insurer*
4 *organized after 1974 to provide medical malpractice*
5 *insurance as set forth in Article 16 (commencing with*
6 *Section 1550) of Chapter 3 of Part 2 of Division 1 of the*
7 *Insurance Code. As used herein, “general partnership”*
8 *means a “partnership” as defined in subdivision (7) of*
9 *Section 16101; “business trust” means a business*
10 *organization formed as a trust; “real estate investment*
11 *trust” means a “real estate investment trust” as defined*
12 *in subsection (a) of Section 856 of the Internal Revenue*
13 *Code of 1986, as amended; and “unincorporated*
14 *association” has the meaning set forth in Section 24000.*

15 SEC. 12.7. Section 5064.5 is added to the Corporations
16 Code, to read:

17 5064.5. “Parent party” means the corporation in
18 control of any constituent domestic or foreign
19 corporation or other business entity and whose equity
20 securities are issued, transferred, or exchanged in a
21 merger pursuant to Section 6019.1 or 8019.1.

22 SEC. 13. Section 6010 of the Corporations Code is
23 amended to read:

24 6010. (a) A public benefit corporation may merge
25 with any domestic corporation, foreign corporation
26 (Section 171), or other business entity (Section ~~174.5~~
27 5063.5). However, without the prior written consent of
28 the Attorney General, a public benefit corporation may
29 only merge with another public benefit corporation or a
30 religious corporation or a foreign nonprofit corporation
31 the articles of which provide that its assets are irrevocably
32 dedicated to charitable, religious, or public purposes.

33 (b) At least 20 days prior to consummation of any
34 merger allowed by subdivision (a), the Attorney General
35 must be provided with a copy of the proposed agreement
36 of merger.

37 (c) Without the prior written consent of the Attorney
38 General, when a merger occurs pursuant to subdivision
39 (a), each member of a constituent corporation may only
40 receive or keep a membership in the surviving



1 corporation for or as a result of the member's
2 membership in the constituent corporation.

3 SEC. 14. Section 6019.1 is added to the Corporations
4 Code, to read:

5 6019.1. (a) Subject to the provisions of Sections 6010
6 and 9640, any one or more corporations may merge with
7 one or more other business entities (Section ~~174.5~~)
8 ~~5063.5~~). One or more other domestic corporations and
9 foreign corporations (Section 5053) may be parties to the
10 merger. Notwithstanding the provisions of this section,
11 such a merger may be effected only if:

12 (1) In a merger in which a domestic corporation or
13 domestic other business entity is a party, it is authorized
14 by the laws under which it is organized to effect the
15 merger.

16 (2) In a merger in which a foreign corporation is a
17 party, it is authorized by the laws under which it is
18 organized to effect the merger.

19 ~~(3) In a merger in which a foreign other business~~
20 ~~entity is the surviving party, the laws of the jurisdiction~~
21 ~~under which it is organized authorize the merger.~~

22 ~~(4) In a merger in which a foreign other business~~
23 ~~entity is a disappearing party, it is not prohibited by the~~
24 ~~laws under which it is organized from effecting the~~
25 ~~merger.~~

26 *(3) In a merger in which a foreign other business*
27 *entity is a party, it is authorized by the laws under which*
28 *it is organized to effect the merger.*

29 (b) Each corporation and each other party which
30 desires to merge shall approve an agreement of merger.
31 The board and the members (Section 5034) of each
32 corporation which desires to merge, and each other
33 person or persons, if any, whose approval of an
34 amendment of the articles of that corporation is required
35 by the articles *or bylaws* shall approve the agreement of
36 merger. The agreement of merger shall be approved on
37 behalf of each other party by those persons authorized or
38 required to approve the merger by the laws under which
39 it is organized. The parties desiring to merge shall be
40 parties to the agreement of merger and other persons,



1 including a parent party (Section ~~1200~~ 5064.5), may be
2 parties to the agreement of merger. The agreement of
3 merger shall state all of the following:

4 (1) The terms and conditions of the merger.

5 (2) The name and place of incorporation or
6 organization of each party and the identity of the
7 surviving party.

8 (3) The amendments, if any, subject to Sections 5810
9 and 5816, to the articles of the surviving corporation, if
10 applicable, to be effected by the merger. The name of the
11 surviving corporation may be, subject to subdivision (b)
12 of Section 5122 and subdivision (b) of Section 9122, the
13 same as, or similar to, the name of a disappearing party to
14 the merger.

15 (4) The manner, if any, of converting the
16 memberships of each of the constituent corporations into
17 shares, memberships, interests, or other securities of the
18 surviving party; and, if any memberships of any of the
19 constituent corporations are not to be converted solely
20 into shares, memberships, interests, or other securities of
21 the surviving party, the cash, rights, securities, or other
22 property which the holders of those memberships are to
23 receive in exchange for the memberships, which cash,
24 rights, securities, or other property may be in addition to,
25 or in lieu of, shares, memberships, interests, or other
26 securities of the surviving corporation or surviving other
27 business entity.

28 (5) Any other details or provisions required by the
29 laws under which any party to the merger is organized,
30 including, if a domestic limited partnership is a party to
31 the merger, subdivision (a) of Section 15678.2, or, if a
32 domestic general partnership is a party to the merger,
33 subdivision (a) of Section 16911, or, if a domestic limited
34 liability company is a party to the merger, subdivision (a)
35 of Section 17551.

36 (6) Any other details or provisions as are desired.

37 (c) Notwithstanding its prior approval, an agreement
38 of merger may be amended prior to the filing of the
39 agreement of merger if the amendment is approved by
40 each constituent corporation in the same manner as the



1 original agreement of merger. If the agreement of
2 merger as so amended and approved is also approved by
3 each of the other parties to the agreement of merger, as
4 so amended it shall then constitute the agreement of
5 merger.

6 (d) The board of a constituent corporation may, in its
7 discretion, abandon a merger, subject to the contractual
8 rights, if any, of third parties, including other parties to
9 the agreement of merger, without further approval by
10 the members (Section 5034) or other persons, at any time
11 before the merger is effective.

12 (e) Each constituent corporation shall sign the
13 agreement of merger by its chairperson of the board,
14 president or a vice president, and also by its secretary or
15 an assistant secretary acting on behalf of their respective
16 corporations.

17 (f) After required approvals of the merger by each
18 constituent corporation and each other party to the
19 merger, the surviving party shall file a copy of the
20 agreement of merger with an officers' certificate of each
21 constituent domestic and foreign corporation attached
22 stating the total number of outstanding shares or
23 membership interests of each class, if any, entitled to vote
24 on the merger (and identifying any other person or
25 persons whose approval is required), that the ~~principal~~
26 ~~terms of the agreement of merger in the form attached~~
27 *agreement of merger in the form attached or its principal*
28 *terms, as required*, were approved by that corporation by
29 a vote of a number of shares or membership interests of
30 each class entitled to vote, if any, which equaled or
31 exceeded the vote required, specifying each class entitled
32 to vote and the percentage vote required of each class,
33 and, if applicable, by that other person or persons whose
34 approval is required.

35 If equity securities of a parent party (Section ~~1200~~)
36 5064.5) are to be issued in the merger, the officers'
37 certificate *or certificate of merger* of the controlled party
38 shall state either that no vote of the shareholders of the
39 parent party was required or that the required vote was
40 obtained. The merger and any amendment of the articles



1 of the surviving corporation, if applicable, contained in
2 the agreement of merger shall be effective upon the filing
3 of the agreement of merger, subject to the provisions of
4 subdivision (h). The agreement of merger shall not be
5 filed, however, until there has been filed by or on behalf
6 of each party to the merger taxed under the Bank and
7 Corporation Tax Law, the existence of which is
8 terminated by the merger, the certificate of satisfaction
9 of the Franchise Tax Board that all taxes imposed by that
10 law have been paid or secured. *If a domestic reciprocal*
11 *insurer organized after 1974 to provide medical*
12 *malpractice insurance is a party to the merger, the*
13 *agreement of merger or certificate of merger shall not be*
14 *filed until there has been filed the certificate issued by the*
15 *Insurance Commissioner approving the merger pursuant*
16 *to Section 1555 of the Insurance Code.*

17 In lieu of an officers' certificate, a certificate of merger,
18 on a form prescribed by the Secretary of State, shall be
19 filed for each constituent other business entity. The
20 certificate of merger shall be executed and
21 acknowledged by each domestic constituent limited
22 liability company by all of the managers of the limited
23 liability company (unless a lesser number is specified in
24 its articles of organization or operating agreement) and
25 by each domestic constituent limited partnership by all
26 general partners (unless a lesser number is provided in
27 ~~the certificate of limited partnership~~ *its certificate of*
28 *limited partnership or partnership agreement*) and by
29 each domestic constituent general partnership by two
30 partners (unless a lesser number is provided in its
31 partnership agreement) and by each foreign constituent
32 limited liability company by one or more managers and
33 by each foreign constituent *general partnership or*
34 *foreign constituent* limited partnership by one or more
35 general partners, and by each constituent reciprocal
36 insurer by the chairperson of the board, president, or vice
37 president, and *also* by the secretary or assistant secretary,
38 or, if a constituent reciprocal insurer has not appointed
39 such officers, by the chairperson of the board, president,
40 or vice president, and *also* by the secretary or assistant

1 secretary of the constituent reciprocal insurer's
2 attorney-in-fact, and by each other party to the merger
3 by those persons required or authorized to execute the
4 certificate of merger by the laws under which that party
5 is organized, specifying for such party the provision of law
6 or other basis for the authority of the signing persons.

7 The certificate of merger shall set forth, if a vote of the
8 shareholders, members, partners, or other holders of
9 interests of ~~the~~ a constituent other business entity was
10 required, a statement setting forth the total number of
11 outstanding interests of each class entitled to vote on the
12 merger and that the agreement of merger or its principal
13 terms, as required, were approved by a vote of the
14 number of interests of each class which equaled or
15 exceeded the vote required, specifying each class entitled
16 to vote and the percentage vote required of each class,
17 and any other information required to be set forth under
18 the laws under which the constituent other business
19 entity is organized, including, if a domestic limited
20 partnership is a party to the merger, subdivision (a) of
21 Section 15678.4, if a domestic general partnership is a
22 party to the merger, subdivision (b) of Section 16915, and,
23 if a domestic limited liability company is a party to the
24 merger, subdivision (a) of Section 17552. *The certificate*
25 *of merger for each constituent foreign other business*
26 *entity, if any, shall also set forth the statutory or other*
27 *basis under which that foreign other business entity is*
28 *authorized by the laws under which it is organized to*
29 *effect the merger.*

30 The Secretary of State may certify a copy of the
31 agreement of merger separate from the officers'
32 certificates and certificates of merger attached thereto.

33 (g) A copy of an agreement of merger certified on or
34 after the effective date by an official having custody
35 thereof has the same force in evidence as the original and,
36 except as against the state, is conclusive evidence of the
37 performance of all conditions precedent to the merger,
38 the existence on the effective date of the surviving party
39 to the merger, the performance of the conditions
40 necessary to the adoption of any amendment to the



1 articles, if applicable, contained in the agreement of
2 merger, and the merger of the constituent corporations,
3 either by themselves or together with other constituent
4 parties, into the surviving party to the merger.

5 (h) (1) The merger of domestic corporations with
6 foreign corporations or foreign other business entities in
7 a merger in which one or more other business entities is
8 a party shall comply with subdivisions (a) and (f) and this
9 subdivision.

10 (2) Subject to subdivision (c) of Section 5008 and
11 paragraph (3), the merger shall be effective as to each
12 domestic constituent corporation and domestic
13 constituent other business entity upon filing of the
14 agreement of merger with attachments as provided in
15 subdivision (f).

16 (3) If the surviving party is a foreign corporation or
17 foreign other business entity, except as provided in
18 paragraph (4), the merger shall be effective as to any
19 domestic disappearing corporation as of the time of
20 effectiveness in the foreign jurisdiction upon the filing in
21 this state of a copy of the agreement of merger with an
22 officers' certificate of the surviving foreign corporation
23 and of each constituent *foreign and domestic* corporation
24 and a certificate of merger of each constituent other
25 business entity attached, which officers' certificates and
26 certificates of merger shall conform to the requirements
27 of subdivision (f).

28 If one or more domestic other business entities is a
29 disappearing party in a merger pursuant to this
30 subdivision in which a foreign other business entity is the
31 surviving entity, a certificate of merger required by the
32 laws under which each domestic other business entity is
33 organized, including subdivision (a) of Section 15678.4,
34 subdivision (b) of Section 16915, or subdivision (a) of
35 Section 17552, if applicable, shall also be filed at the same
36 time as the filing of the agreement of merger.

37 (4) If the date of the filing in this state pursuant to this
38 subdivision is more than six months after the time of the
39 effectiveness in the foreign jurisdiction, or if the powers
40 of a domestic disappearing corporation are suspended at



1 the time of effectiveness in the foreign jurisdiction, the
2 merger shall be effective as to the domestic disappearing
3 corporation as of the date of filing in this state.

4 (5) Each foreign disappearing corporation that is
5 qualified for the transaction of intrastate business shall
6 automatically by the filing pursuant to subdivision (f)
7 surrender its right to transact intrastate business as of the
8 date of filing in this state or, if later, the effective date of
9 the merger. With respect to each foreign disappearing
10 other business entity previously registered for the
11 transaction of intrastate business in this state, the filing of
12 the agreement of merger pursuant to subdivision (f)
13 automatically has the effect of a cancellation of
14 registration for that foreign other business entity as of the
15 date of filing in this state or, if later, the effective date of
16 the merger, without the necessity of the filing of a
17 certificate of cancellation.

18 SEC. 15. Section 6020 of the Corporations Code is
19 amended to read:

20 6020. (a) Upon merger pursuant to this chapter the
21 ~~separate existence of the disappearing corporations~~
22 ~~ceases and the surviving domestic corporation, foreign~~
23 ~~corporation, or other business entity shall succeed,~~
24 ~~without other transfer, to all the rights and property of~~
25 ~~each of the disappearing corporations and shall be subject~~
26 ~~to all the debts and liabilities of each and trust obligations~~
27 ~~upon the property of a disappearing corporation in the~~
28 ~~same manner as if the surviving corporation or other~~
29 ~~business entity had itself incurred them. *separate*~~
30 *existences of the disappearing parties to the merger cease*
31 *and the surviving party to the merger shall succeed,*
32 *without other transfer, to all the rights and property of*
33 *each of the disappearing parties to the merger and shall*
34 *be subject to all the debts and liabilities of each and trust*
35 *obligations upon the property of a disappearing party in*
36 *the same manner as if incurred by the surviving party to*
37 *the merger.*

38 (b) All rights of creditors and all liens and trusts upon
39 or arising from the property of each of the constituent
40 corporations *and other parties to the merger* shall be



1 preserved unimpaired, provided that the liens and trust
2 obligations upon property of a disappearing ~~corporation~~
3 *party* shall be limited to the property affected thereby
4 immediately prior to the time the merger is effective.

5 (c) Any action or proceeding pending by or against
6 any disappearing corporation *or other party to the*
7 *merger* may be prosecuted to judgment, which shall bind
8 the surviving party to the merger, or the surviving party
9 to the merger may be proceeded against or substituted in
10 its place.

11 SEC. 16. Section 6021 of the Corporations Code is
12 amended to read:

13 6021. Whenever a domestic or foreign corporation or
14 other business entity (Section ~~174.5~~ 5063.5) having any
15 real property in this state merges with another domestic
16 or foreign corporation or other business entity pursuant
17 to the laws of this state or of the state or place in which
18 any constituent party to the merger was organized, and
19 the laws of the state or place of organization (including
20 this state) of any disappearing party to the merger
21 provide substantially that the making and filing of the
22 agreement of merger vests in the surviving party to the
23 merger all the real property of any disappearing party to
24 the merger, the filing for record in the office of the county
25 recorder of any county in this state in which any of the
26 real property of the disappearing party to the merger is
27 located of either (a) a certificate prescribed by the
28 Secretary of State, or (b) a copy of the agreement of
29 merger or certificate of merger, certified by the
30 Secretary of State or an authorized public official of the
31 state or place pursuant to the laws of which the merger
32 is effected, shall evidence record ownership in the
33 surviving party to the merger of all interest of ~~such~~ *that*
34 disappearing party to the merger in and to the real
35 property located in that county.

36 SEC. 17. Section 6022 of the Corporations Code is
37 amended to read:

38 6022. Any bequest, devise, gift, grant, or promise
39 contained in a will or other instrument of donation,
40 subscription, or conveyance, which is made to a



1 constituent corporation and which takes effect or
2 remains payable after the merger, inures to the surviving
3 party to the merger.

4 SEC. 18. Section 8010 of the Corporations Code is
5 amended to read:

6 8010. A mutual benefit corporation may merge with
7 any domestic corporation, foreign corporation, foreign
8 business corporation, or other business entity (Section
9 ~~474.5~~ 5063.5). However, a merger with a public benefit
10 corporation or a religious corporation must have the prior
11 written consent of the Attorney General.

12 SEC. 19. Section 8019.1 is added to the Corporations
13 Code, to read:

14 8019.1. (a) Subject to the provisions of Section 8010,
15 any one or more corporations may merge with one or
16 more other business entities (Section ~~174.5~~ 5063.5). One
17 or more other domestic corporations, foreign
18 corporations (Sections 5053), and foreign business
19 corporations (Section 5052) may be parties to the merger.
20 Notwithstanding the provisions of this section, such a
21 merger may be effected only if:

22 (1) In a merger in which a domestic corporation or
23 domestic other business entity is a party, it is authorized
24 by the laws under which it is organized to effect the
25 merger.

26 (2) In a merger in which a foreign corporation or
27 foreign business corporation is a party, it is authorized by
28 the laws under which it is organized to effect the merger.

29 ~~(3) In a merger in which a foreign other business~~
30 ~~entity is the surviving party, the laws of the jurisdiction~~
31 ~~under which it is organized authorize the merger.~~

32 ~~(4) In a merger in which a foreign other business~~
33 ~~entity is a disappearing party, it is not prohibited by the~~
34 ~~laws under which it is organized from effecting the~~
35 ~~merger.~~

36 *(3) In a merger in which a foreign other business*
37 *entity is a party, it is authorized by the laws under which*
38 *it is organized to effect the merger.*

39 (b) Each corporation and each other party which
40 desires to merge shall approve an agreement of merger.



1 The board and the members (Section 5034) of each
2 corporation which desires to merge, and each other
3 person or persons, if any, whose approval of an
4 amendment of the articles of that corporation is required
5 by the articles *or bylaws* shall approve the agreement of
6 merger. The agreement of merger shall be approved on
7 behalf of each other constituent party by those persons
8 authorized or required to approve the merger by the laws
9 under which it is organized. The parties desiring to merge
10 shall be parties to the agreement of merger and other
11 persons, including a parent party (Section ~~4200~~ 5064.5),
12 may be parties to the agreement of merger. The
13 agreement of merger shall state all of the following:

14 (1) The terms and conditions of the merger.

15 (2) The name and place of incorporation or
16 organization of each party and the identity of the
17 surviving party.

18 (3) The amendments, if any, subject to Sections 7810
19 and 7816, to the articles of the surviving corporation, if
20 applicable, to be effected by the merger. The name of the
21 surviving corporation may be, subject to ~~subdivision (b)~~
22 *subdivisions (b) and (c)* of Section 7122, the same as or
23 similar to the name of a disappearing party to the merger.

24 (4) The manner, if any, of converting the
25 memberships or securities of each of the constituent
26 corporations into shares, memberships, interests, or other
27 securities of the surviving party; and, if any memberships
28 or securities of any of the constituent corporations are not
29 to be converted solely into shares, memberships,
30 interests, or other securities of the surviving party, cash,
31 rights, securities, or other property which the holders of
32 those memberships or securities are to receive in
33 exchange for the memberships or securities, which cash,
34 rights, securities, or other property may be in addition to
35 or in lieu of shares, memberships, interests, or other
36 securities of the surviving party.

37 (5) Any other details or provisions required by the
38 laws under which any party to the merger is organized,
39 including, if a domestic limited partnership is a party to
40 the merger, subdivision (a) of Section 15678.2, or, if a



1 domestic general partnership is a party to the merger,
2 subdivision (a) of Section 16911, or, if a domestic limited
3 liability company is a party to the merger, subdivision (a)
4 of Section 17551.

5 (6) Any other details or provisions as are desired.

6 (c) Each membership of the same class of any
7 constituent corporation (other than the cancellation of
8 memberships owned, directly or indirectly, by a party to
9 the merger or its parent) shall, unless all members of the
10 class consent or unless the Commissioner of Corporations
11 has approved the terms and conditions of the transaction
12 and the fairness of such terms pursuant to Section 25142,
13 be treated equally with respect to any distribution of cash,
14 property, rights, or securities.

15 (d) Notwithstanding its prior approval, an agreement
16 of merger may be amended prior to the filing of the
17 agreement of merger if the amendment is approved by
18 each constituent corporation in the same manner as the
19 original agreement of merger. If the agreement of
20 merger as so amended and approved is also approved by
21 each of the other parties to the agreement of merger, as
22 so amended it shall then constitute the agreement of
23 merger.

24 (e) The board of a constituent corporation may, in its
25 discretion, abandon a merger, subject to the contractual
26 rights, if any, of third parties, including other parties to
27 the agreement of merger, without further approval by
28 the members (Section 5034) or other persons, at any time
29 before the merger is effective.

30 (f) Each constituent corporation shall sign the
31 agreement of merger by its chairperson of the board,
32 president, or a vice president and also by its secretary or
33 an assistant secretary acting on behalf of their respective
34 corporations.

35 (g) After required approvals of the merger by each
36 constituent corporation and each other party to the
37 merger, the surviving party shall file a copy of the
38 agreement of merger with an officers' certificate of each
39 constituent domestic ~~and foreign~~ corporation, *foreign*
40 *corporation*, and foreign business corporation attached



1 stating the total number of outstanding shares or
2 membership interests of each class entitled to vote on the
3 merger (and identifying any other person or persons
4 whose approval is required), that the ~~principal terms of~~
5 ~~the agreement of merger in the form attached~~ *agreement*
6 *of merger in the form attached or its principal terms, as*
7 *required*, were approved by that corporation by a vote of
8 a number of shares or membership interests of each class
9 which equaled or exceeded the vote required, specifying
10 each class entitled to vote required of each class, and, if
11 applicable, by such other person or persons whose
12 approval is required.

13 If equity securities of a parent party (Section ~~1200~~
14 ~~5064.5~~) are to be issued in the merger, the officers'
15 certificate *or certificate of merger* of the controlled party
16 shall state either that no vote of the shareholders of the
17 parent party was required or that the required vote was
18 obtained. The merger and any amendment of the articles
19 of the surviving corporation, if applicable, contained in
20 the agreement of merger shall be effective upon the filing
21 of the agreement of merger, subject to the provisions of
22 subdivision (i). The agreement of merger shall not be
23 filed, however, until there has been filed by or on behalf
24 of each party to the merger taxed under the Bank and
25 Corporation Tax Law, the existence of which is
26 terminated by the merger, the certificate of satisfaction
27 of the Franchise Tax Board that all taxes imposed by that
28 law have been paid or secured. *If a domestic reciprocal*
29 *insurer organized after 1974 to provide medical*
30 *malpractice insurance is a party to the merger, the*
31 *agreement of merger or certificate of merger shall not be*
32 *filed until there has been filed the certificate issued by the*
33 *Insurance Commissioner approving the merger pursuant*
34 *to Section 1555 of the Insurance Code.*

35 In lieu of an officers' certificate, a certificate of merger,
36 on a form prescribed by the Secretary of State, shall be
37 filed for each constituent other business entity. The
38 certificate of merger shall be executed and
39 acknowledged by each domestic constituent limited
40 liability company by all of the managers of the limited



1 liability company (unless a lesser number is specified in
2 its articles of organization or operating agreement) and
3 by each domestic constituent limited partnership by all
4 general partners (unless a lesser number is provided in
5 ~~the certificate of limited partnership~~) *its certificate of*
6 *limited partnership or partnership agreement*) and by
7 each domestic constituent general partnership by two
8 partners (unless a lesser number is provided in its
9 partnership agreement) and by each foreign constituent
10 limited liability company by one or more managers and
11 by each foreign constituent *general partnership or*
12 *foreign constituent* limited partnership by one or more
13 general partners, and by each constituent reciprocal
14 insurer by the chairperson of the board, president, or vice
15 president, and by the secretary or assistant secretary, or,
16 if a constituent reciprocal insurer has not appointed such
17 officers, by the chairperson of the board, president, or
18 vice president, and by the secretary or assistant secretary
19 of the constituent reciprocal insurer's attorney-in-fact,
20 and by each other party to the merger by those persons
21 required or authorized to execute the certificate of
22 merger by the laws under which that party is organized,
23 specifying for such party the provision of law or other
24 basis for the authority of the signing persons.

25 The certificate of merger shall set forth, if a vote of the
26 shareholders, members, partners, or other holders of
27 interests of ~~the~~ *a* constituent other business entity was
28 required, a statement setting forth the total number of
29 outstanding interests of each class entitled to vote on the
30 merger and that the principal terms of the agreement of
31 merger were approved by a vote of the number of
32 interests of each class which equaled or exceeded the vote
33 required, specifying each class entitled to vote and the
34 percentage vote required of each class, and any other
35 information required to be set forth under the laws under
36 which the constituent other business entity is organized,
37 including, if a domestic limited partnership is a party to
38 the merger, subdivision (a) of Section 15678.4, if a
39 domestic general partnership is a party to the merger,
40 subdivision (b) of Section 16915 and, if a domestic limited



1 liability company is a party to the merger, subdivision (a)
2 of Section 17552. *The certificate of merger for each*
3 *constituent foreign other business entity, if any, shall also*
4 *set forth the statutory or other basis under which that*
5 *foreign other business entity is authorized by the laws*
6 *under which it is organized to effect the merger.*

7 The Secretary of State may certify a copy of the
8 agreement of merger separate from the officers'
9 certificates and certificates of merger attached thereto.

10 (h) A copy of an agreement of merger certified on or
11 after the effective date by an official having custody
12 thereof has the same force in evidence as the original and,
13 except as against the state, is conclusive evidence of the
14 performance of all conditions precedent to the merger,
15 the existence on the effective date of the surviving party
16 to the merger, the performance of the conditions
17 necessary to the adoption of any amendment to the
18 articles, if applicable, contained in the agreement of
19 merger, and of the merger of the constituent
20 corporations, either by themselves or together with other
21 constituent parties, into the surviving party to the
22 merger.

23 (i) (1) The merger of domestic corporations with
24 foreign corporations or foreign other business entities in
25 a merger in which one or more other business entities is
26 a party shall comply with subdivisions (a) and (g) and this
27 subdivision.

28 (2) Subject to subdivision (c) of Section 5008 and
29 paragraph (3), the merger shall be effective as to each
30 domestic constituent corporation and domestic
31 constituent other business entity upon filing of the
32 agreement of merger with attachments as provided in
33 subdivision (g).

34 (3) If the surviving party is a foreign corporation or
35 foreign business corporation or foreign other business
36 entity, except as provided in paragraph (4), the merger
37 shall be effective as to any domestic disappearing
38 corporation as of the time of effectiveness in the foreign
39 jurisdiction upon the filing in this state of a copy of the
40 agreement of merger with an officers' certificate of the



1 surviving foreign corporation ~~and of each domestic~~
2 ~~constituent~~ *or foreign business corporation and of each*
3 *constituent foreign and domestic* corporation and a
4 certificate of merger of each constituent other business
5 entity attached, which officers' certificates and
6 certificates of merger shall conform to the requirements
7 of subdivision (g).

8 If one or more domestic other business entities is a
9 disappearing party in a merger pursuant to this
10 subdivision in which a foreign other business entity is the
11 surviving entity, a certificate of merger required by the
12 laws under which each domestic other business entity is
13 organized, including subdivision (a) of Section 15678.4,
14 subdivision (b) of Section 16915, or subdivision (a) of
15 Section 17522, if applicable, shall also be filed at the same
16 time as the filing of the agreement of merger.

17 (4) If the date of the filing in this state pursuant to this
18 subdivision is more than six months after the time of the
19 effectiveness in the foreign jurisdiction, or if the powers
20 of a domestic disappearing corporation are suspended at
21 the time of effectiveness in the foreign jurisdiction, the
22 merger shall be effective as to the domestic disappearing
23 corporation as of the date of filing in this state.

24 (5) Each foreign disappearing corporation that is
25 qualified for the transaction of intrastate business shall
26 automatically by the filing pursuant to subdivision (g)
27 surrender its right to transact intrastate business as of the
28 date of filing in this state or, if later, the effective date of
29 the merger. With respect to each foreign disappearing
30 other business entity previously registered for the
31 transaction of intrastate business in this state, the filing of
32 the agreement of merger pursuant to subdivision (g)
33 automatically has the effect of a cancellation of
34 registration for that foreign other business entity as of the
35 date of filing in this state or, if later, the effective date of
36 the merger, without the necessity of the filing of a
37 certificate of cancellation.

38 SEC. 20. Section 8020 of the Corporations Code is
39 amended to read:



1 8020. (a) Upon merger pursuant to this chapter the
2 ~~separate existence of the disappearing corporations~~
3 ~~ceases and the surviving domestic corporation, foreign~~
4 ~~corporation, or other business entity shall succeed,~~
5 ~~without other transfer, to all the rights and property of~~
6 ~~each of the disappearing corporations and shall be subject~~
7 ~~to all the debts and liabilities of each and trust obligations~~
8 ~~upon the property of a disappearing corporation in the~~
9 ~~same manner as if the surviving corporation or other~~
10 ~~business entity had itself incurred them. *separate*~~
11 ~~*existences of the disappearing parties to the merger cease*~~
12 ~~*and the surviving party to the merger shall succeed,*~~
13 ~~*without other transfer, to all the rights and property of*~~
14 ~~*each of the disappearing parties to the merger and shall*~~
15 ~~*be subject to all the debts and liabilities of each and trust*~~
16 ~~*obligations upon the property of a disappearing party in*~~
17 ~~*the same manner as if incurred by the surviving party to*~~
18 ~~*the merger.*~~

19 (b) All rights of creditors and all liens and trusts upon
20 or arising from the property of each of the constituent
21 corporations *and other parties to the merger* shall be
22 preserved unimpaired, provided that the liens and trust
23 obligations upon property of a disappearing ~~corporation~~
24 *party* shall be limited to the property affected thereby
25 immediately prior to the time the merger is effective.

26 (c) Any action or proceeding pending by or against
27 any disappearing corporation *or other party to the*
28 *merger* may be prosecuted to judgment, which shall bind
29 the surviving party to the merger, or the surviving party
30 to the merger may be proceeded against or substituted in
31 its place.

32 SEC. 21. Section 8021 of the Corporations Code is
33 amended to read:

34 8021. Whenever a domestic or foreign *or foreign*
35 *business* corporation or other business entity (Section
36 ~~474.5~~ 5063.5) having any real property in this state
37 merges with another domestic or foreign *or foreign*
38 *business* corporation or other business entity pursuant to
39 the laws of this state or of the state or place in which any
40 constituent party to the merger was organized, and the



1 laws of the state or place of organization (including this
2 state) of any disappearing party to the merger provide
3 substantially that the making and filing of the agreement
4 of merger vests in the surviving party to the merger all
5 the real property of any disappearing party to the
6 merger, the filing for record in the office of the county
7 recorder of any county in this state in which any of the
8 real property of the disappearing party to the merger is
9 located of either (a) a certificate prescribed by the
10 Secretary of State, or (b) a copy of the agreement of
11 merger or certificate of merger, certified by the
12 Secretary of State or an authorized public official of the
13 state or place pursuant to the laws of which the merger
14 is effected, shall evidence record ownership in the
15 surviving party to the merger of all interest of such
16 disappearing party to the merger in and to the real
17 property located in that county.

18 SEC. 22. Section 8022 of the Corporations Code is
19 amended to read:

20 8022. Any bequest, devise, gift, grant, or promise
21 contained in a will or other instrument of donation,
22 subscription, or conveyance, which is made to a
23 constituent corporation and which takes effect or
24 remains payable after the merger, inures to the surviving
25 party to the merger.

26 SEC. 23. Section 9640 of the Corporations Code is
27 amended to read:

28 9640. (a) The provisions of Chapter 10 (commencing
29 with Section 6010) of Part 2 apply to religious
30 corporations except subdivision (a) of Section 6010 and
31 Sections 6011 and 6012.

32 (b) A corporation may merge with any domestic
33 corporation, foreign corporation, or other business entity
34 (Section ~~474.5~~ 5063.5). However, without the prior
35 written consent of the Attorney General, a religious
36 corporation may only merge with another religious
37 corporation or with a public benefit corporation or a
38 foreign nonprofit corporation the articles of which
39 provide that its assets are irrevocably dedicated to
40 charitable, religious or public purposes.



1 (c) The principal terms of the merger shall be
2 approved by the members (Section 5034) of each class of
3 each constituent corporation and by each other person or
4 persons whose approval of an amendment of the articles
5 is required by the articles or bylaws; and the approval by
6 the members (Section 5034) or any other person or
7 persons required by this section may be given before or
8 after the approval by the board.

9 (d) The board of each corporation that desires to
10 merge shall approve an agreement of merger. The
11 constituent corporations shall be parties to the agreement
12 of merger and other persons may be parties to the
13 agreement of merger. The agreement shall state all of the
14 following:

15 (1) The terms and conditions of the merger.

16 (2) The amendments, subject to Sections 5810 and
17 5816, to the articles of the surviving corporation to be
18 effected by the merger, if any. If any amendment changes
19 the name of the surviving corporation, the new name
20 may be the same as or similar to the name of a
21 disappearing corporation, subject to subdivision (b) of
22 Section 9122.

23 (3) The amendments to the bylaws of the surviving
24 corporation to be effected by the merger, if any.

25 (4) The name and place of incorporation of each
26 constituent corporation and which of the constituent
27 corporations is the surviving corporation.

28 (5) The manner, if any, of converting memberships of
29 the constituent corporations into memberships of the
30 surviving corporation.

31 (6) Any other details or provisions as are desired, if
32 any.

33 *SEC. 23.5. Section 12242.5 is added to the*
34 *Corporations Code, to read:*

35 *12242.5. "Other business entity" means a domestic or*
36 *foreign limited liability company, limited partnership,*
37 *general partnership, business trust, real estate*
38 *investment trust, unincorporated association (other than*
39 *a nonprofit association), or a domestic reciprocal insurer*
40 *organized after 1974 to provide medical malpractice*



1 insurance as set forth in Article 16 (commencing with
2 Section 1550) of Chapter 3 of Part 2 of Division 1 of the
3 Insurance Code. As used herein, “general partnership”
4 means a “partnership” as defined in subdivision (7) of
5 Section 16101; “business trust” means a business
6 organization formed as a trust; “real estate investment
7 trust” means a “real estate investment trust” as defined
8 in subsection (a) of Section 856 of the Internal Revenue
9 Code of 1986, as amended; and “unincorporated
10 association” has the meaning set forth in Section 24000.

11 SEC. 23.7. Section 12242.6 is added to the
12 Corporations Code, to read:

13 12242.6. “Parent party” means the corporation in
14 control of any constituent domestic or foreign
15 corporation or other business entity and whose equity
16 securities are issued, transferred, or exchanged in a
17 merger pursuant to Section 12540.1.

18 SEC. 24. Section 12530 of the Corporations Code is
19 amended to read:

20 12530. Any corporation may merge with another
21 domestic corporation, foreign corporation, or other
22 business entity (Section ~~174.5~~ 12242.5). However, a
23 merger with a public benefit corporation or a religious
24 corporation must have the prior written consent of the
25 Attorney General.

26 SEC. 25. Section 12540.1 is added to the Corporations
27 Code, to read:

28 12540.1. (a) Any one or more corporations may
29 merge with one or more other business entities (Section
30 ~~174.5~~ 12242.5). Subject to the provisions of Section 12530,
31 one or more other domestic corporations or foreign
32 corporations (Section 12237) may be parties to the
33 merger.

34 Notwithstanding the provisions of this section, such a
35 merger may be effected only if:

36 (1) In a merger in which a domestic corporation or
37 domestic other business entity is a party, it is authorized
38 by the laws under which it is organized to effect the
39 merger.



1 (2) In a merger in which a foreign corporation is a
2 party, it is authorized by the laws under which it is
3 organized to effect the merger.

4 (3) In a merger in which a foreign other business
5 entity is the surviving party, the laws of the jurisdiction
6 under which it is organized authorize the merger.

7 ~~(4) In a merger in which a foreign other business~~
8 ~~entity is a disappearing party, it is not prohibited by the~~
9 ~~laws under which it is organized from effecting the~~
10 ~~merger.~~

11 ~~(b) Each corporation and each other party which~~
12 ~~entity is a party, it is authorized by the laws under which~~
13 ~~it is organized to effect the merger.~~

14 (b) Each corporation, other domestic corporation,
15 foreign corporation, and other business entity which
16 desires to merge shall approve an agreement of merger.
17 The board and the members of each corporation which
18 desires to merge shall approve (Sections 12222 and 12224)
19 the agreement of merger. The agreement of merger shall
20 be approved on behalf of each other constituent party by
21 those persons authorized or required to approve the
22 merger by the laws under which it is organized.

23 The parties desiring to merge shall be parties to the
24 agreement of merger and other persons, including a
25 parent party (Section ~~1200~~ 12242.6), may be parties to
26 the agreement of merger. The agreement of merger shall
27 state all of the following:

28 (1) The terms and conditions of the merger.

29 (2) The name and place of incorporation or
30 organization of each party and the identity of the
31 surviving party.

32 (3) The amendments, if any, subject to Sections 12500
33 and 12507, to the articles of the surviving corporation, if
34 applicable, to be effected by the merger. The name of the
35 surviving corporation may be, subject to ~~subdivision~~
36 *subdivisions (b) and* (c) of Section 12302, the same as, or
37 similar to, the name of a disappearing party to the
38 merger.

39 (4) The manner, if any, of converting the
40 memberships or securities of each of the constituent



1 corporations into shares, memberships, interests, or other
2 securities of the surviving party and, if any memberships
3 or securities of any of the constituent corporations are not
4 to be converted solely into shares, memberships,
5 interests, or other securities of the surviving party, the
6 cash, rights, securities, or other *property* which the
7 holders of those memberships or securities are to receive
8 in exchange for the memberships or securities, which
9 cash, rights, securities, or other property may be in
10 addition to or in lieu of shares, memberships, interests, or
11 other securities of the surviving party.

12 (5) Any other details or provisions required by the
13 laws under which any party to the merger is organized,
14 including, if a domestic limited partnership is a party to
15 the merger, subdivision (a) of Section 15678.2, or, if a
16 domestic general partnership is a party to the merger,
17 subdivision (a) of Section 16911, or, if a domestic limited
18 liability company is a party to the merger, subdivision (a)
19 of Section 17551.

20 (6) Any other details or provisions as are desired.

21 (c) Each membership of the same class of any
22 constituent corporation (other than the cancellation of
23 memberships owned, directly or indirectly, by a party to
24 the merger or its parent) shall, unless all members of the
25 class consent or unless the Commissioner of Corporations
26 has approved the terms and conditions of the transaction
27 and the fairness of the terms pursuant to Section 25142,
28 be treated equally with respect to any distribution of cash,
29 property, rights, or securities.

30 (d) Notwithstanding its prior approval, an agreement
31 of merger may be amended prior to the filing of the
32 agreement of merger if the amendment is approved by
33 each constituent corporation in the same manner as the
34 original agreement of merger. If the agreement of
35 merger as so amended and approved is also approved by
36 each of the other parties to the agreement of merger, as
37 so amended it shall ~~them~~ *then* constitute the agreement
38 of merger.

39 (e) The board of a constituent corporation may, ~~it~~ *in*
40 its discretion, abandon a merger, subject to the



1 contractual rights, if any, of third parties, including other
2 parties to the agreement of merger, without further
3 approval by the members (Section 12224), at any time
4 before the merger is effective.

5 (f) Each constituent corporation shall sign the
6 agreement of merger by its chairperson of the board,
7 president, or a vice president and also by its secretary or
8 an assistant secretary acting on behalf of their respective
9 corporations.

10 (g) After required approvals of the merger by each
11 constituent corporation and each other party to the
12 merger, the surviving party shall file a copy of the
13 agreement of merger with an officers' certificate of each
14 constituent domestic and foreign corporation attached
15 stating the total number of outstanding shares or
16 membership interests of each class entitled to vote on the
17 merger (and identifying any other person or persons
18 whose approval is required), that the ~~principal terms of~~
19 ~~the agreement of merger in the form attached~~ *agreement*
20 *of merger in the form attached or its principal terms, as*
21 *required*, were approved by that corporation by a vote of
22 a number of shares or membership interests of each class
23 which equaled or exceeded the vote required, specifying
24 each class entitled to vote and the percentage vote
25 required of each class, and, if applicable, by that other
26 person or persons whose approval is required.

27 If equity securities of a parent party (Section ~~1200~~
28 *12242.6*) are to be issued in the merger, the officers'
29 certificate *or certificate of merger* of the controlled party
30 shall state either that no vote of the shareholders of the
31 parent party was required or that the required vote was
32 obtained. The merger and any amendment of the articles
33 of the surviving corporation, if applicable, contained in
34 the agreement of merger shall be effective upon the filing
35 of the agreement of merger, subject to the provisions of
36 subdivision (i). The agreement of merger shall not be
37 filed, however, until there has been filed by or on behalf
38 of each party to the merger taxed under the Bank and
39 Corporation Tax Law, the existence of which is
40 terminated by the merger, the certificate of satisfaction



1 of the Franchise Tax Board that all taxes imposed by that
2 law have been paid or secured. *If a domestic reciprocal*
3 *insurer organized after 1974 to provide medical*
4 *malpractice insurance is a party to the merger, the*
5 *agreement of merger or certificate of merger shall not be*
6 *filed until there has been filed the certificate issued by the*
7 *Insurance Commissioner approving the merger pursuant*
8 *to Section 1555 of the Insurance Code.*

9 In lieu of an officers' certificate, a certificate of merger,
10 on a form prescribed by the Secretary of State, shall be
11 filed for each constituent other business entity. The
12 certificate of merger shall be executed and
13 acknowledged by each domestic constituent limited
14 liability company by all of the managers of the limited
15 liability company (unless a lesser number is specified in
16 its articles of organization or operating agreement) and
17 by each domestic constituent limited partnership by all
18 general partners (unless a lesser number is provided in
19 ~~the certificate of limited partnership~~ *its certificate of*
20 *limited partnership or partnership agreement*) and by
21 each domestic constituent general partnership by two
22 partners (unless a lesser number is provided in its
23 partnership agreement) and by each foreign constituent
24 *general partnership or foreign constituent* limited
25 liability company by one or more managers and by each
26 foreign constituent limited partnership by one or more
27 general partners, and by each constituent reciprocal
28 insurer by the chairperson of the board, president, or vice
29 president, and by the secretary or assistant secretary, or,
30 if a constituent reciprocal insurer has not appointed such
31 officers, by the chairperson of the board, president, or
32 vice president, and by the secretary or assistant secretary
33 of the constituent reciprocal insurer's attorney-in-fact,
34 and by each other party to the merger by those persons
35 required or authorized to execute the certificate of
36 merger by the laws under which that party is organized,
37 specifying for such party the provision of law or other
38 basis for the authority of the signing persons.

39 The certificate of merger shall set forth, if a vote of the
40 shareholders, members, partners, or other holders of



1 interests of the constituent other business entity was
2 required, a statement setting forth the total number of
3 outstanding interests of each class entitled to vote on the
4 merger and that the agreement of merger or its principal
5 terms, as required, were approved by a vote of the
6 number of interests of each class which equaled or
7 exceeded the vote required, specifying each class entitled
8 to vote and the percentage vote required of each class,
9 and any other information required to be set forth under
10 the laws under which the constituent other business
11 entity is organized, including, if a domestic limited
12 partnership is a party to the merger, subdivision (a) of
13 Section 15678.4, if a domestic general partnership is a
14 party to the merger, subdivision (b) of Section 16915, and,
15 if a domestic limited liability company is a party to the
16 merger, subdivision (a) of Section 17552. *The certificate
17 of merger for each constituent foreign other business
18 entity, if any, shall also set forth the statutory or other
19 basis under which that foreign other business entity is
20 authorized by the laws under which it is organized to
21 effect the merger.*

22 The Secretary of State may certify a copy of the
23 agreement of merger separate from the officers'
24 certificates and certificates of merger attached thereto.

25 (h) a copy of an agreement of merger certified on or
26 after the effective date by an official having custody
27 thereof has the same force in evidence as the original and,
28 except as against the state, is conclusive evidence of the
29 performance of all conditions precedent to the merger,
30 the existence on the effective date of the surviving party
31 to the merger, the performance of the conditions
32 necessary to the adoption of any amendment to the
33 articles, if applicable, contained in the agreement of
34 merger, and of the merger of the constituent
35 corporations, either by themselves or together with other
36 constituent parties, into the surviving party to the
37 merger.

38 (i) (1) The merger of domestic corporations with
39 foreign corporations or foreign other business entities in
40 a merger in which one or more other business entities is



1 a party shall comply with subdivisions (a) and (g) and this
2 subdivision.

3 (2) Subject to subdivision (c) of Section 12214 and
4 paragraph (3), the merger shall be effective as to each
5 domestic constituent corporation and domestic
6 constituent other business entity upon filing of the
7 agreement of merger with attachments as provided in
8 subdivision (g).

9 (3) If the surviving party is a foreign corporation or
10 foreign other business entity, except as provided in
11 paragraph (4), the merger shall be effective as to any
12 domestic disappearing corporation as of the time of
13 effectiveness in the foreign jurisdiction upon the filing in
14 this state of a copy of the agreement of merger with an
15 officers' certificate of the surviving foreign corporation
16 and of each ~~domestic constituent~~ *constituent foreign and*
17 *domestic* corporation and a certificate of merger of each
18 constituent other business entity attached, which officers'
19 certificates and certificates of merger shall conform to the
20 requirements of subdivision (g).

21 If one or more domestic other business entities is a
22 disappearing party in a merger pursuant to this
23 subdivision in which a foreign other business entity is the
24 surviving entity, a certificate of merger required by the
25 laws under which each domestic other business entity is
26 organized, including subdivision (a) of Section 15678.4,
27 subdivision (b) of Section 16915 or subdivision (a) of
28 Section 17552, if applicable, shall also be filed at the same
29 time as the filing of the agreement of merger.

30 (4) If the date of the filing in this state pursuant to this
31 subdivision is more than six months after the time of the
32 effectiveness in the foreign jurisdiction, or if the powers
33 of a domestic disappearing corporation are suspended at
34 the time of effectiveness in the foreign jurisdiction, the
35 merger shall be effective as to the domestic disappearing
36 corporation as of the date of filing in this state.

37 (5) Each foreign disappearing corporation that is
38 qualified for the transaction of intrastate business shall
39 automatically by the filing pursuant to subdivision (g)
40 surrender its right to transact intrastate business as of the



1 date of filing in this state or, if later, the effective date of
2 the merger. With respect to each foreign disappearing
3 other business entity previously registered for the
4 transaction of intrastate business in this state, the filing of
5 the agreement of merger pursuant to subdivision (g)
6 automatically has the effect of a cancellation of
7 registration for that foreign other business entity without
8 the necessity of the filing of a certificate of cancellation.

9 *SEC. 25.2. Section 12550 of the Corporations Code is*
10 *amended to read:*

11 12550. (a) Upon merger pursuant to this chapter the
12 ~~separate—existence~~ *existences* of the disappearing
13 ~~corporations—ceases~~ *parties to the merger cease* and the
14 ~~surviving—corporation~~ *party to the merger* shall succeed,
15 without other transfer, to all the rights and property of
16 each of the disappearing—~~corporations~~ *parties to the*
17 *merger* and shall be subject to all the debts and liabilities
18 of each and trust obligations upon the property of a
19 ~~disappearing—corporation~~ *party* in the same manner as if
20 ~~incurred by the surviving corporation had itself incurred~~
21 ~~them~~ *party to the merger.*

22 (b) All rights of creditors and all liens and trusts upon
23 or arising from the property of each of the constituent
24 corporations *and other parties to the merger* shall be
25 preserved unimpaired, provided that—~~such~~ *these* liens
26 and trust obligations upon property of a disappearing
27 ~~corporation~~ *party* shall be limited to the property
28 affected thereby immediately prior to the time the
29 merger is effective.

30 (c) Any action or proceeding pending by or against
31 any disappearing corporation *or other party to the*
32 *merger* may be prosecuted to judgment, which shall bind
33 the surviving—~~corporation~~ *party to the merger*, or the
34 surviving—~~corporation~~ *party to the merger* may be
35 proceeded against or substituted in its place.

36 *SEC. 25.4. Section 12551 of the Corporations Code is*
37 *amended to read:*

38 12551. Whenever a domestic or foreign corporation
39 *or other business entity (Section 12242.5)* having any real
40 property in this state merges with another domestic or



1 foreign corporation *or other business entity* pursuant to
2 the laws of this state or of the state or place in which any
3 constituent ~~corporation~~ *party to the merger* was
4 ~~incorporated~~ *organized*, and the laws of the state or place
5 of ~~incorporation~~ *organization* (including this state) of any
6 disappearing ~~corporation~~ *party to the merger* provide
7 substantially that the making and filing of the agreement
8 of merger vests in the surviving ~~corporation~~ *party to the*
9 *merger* all the real property of any disappearing
10 ~~corporation~~ *party to the merger*, the filing for record in
11 the office of the county recorder of any county in this
12 state in which any of the real property of ~~such the~~
13 disappearing ~~corporation~~ *party to the merger* is located
14 of either (a) a certificate prescribed by the Secretary of
15 State, or (b) a copy of the agreement of merger or
16 certificate of merger, certified by the Secretary of State
17 or an authorized public official of the state or place
18 pursuant to the laws of which the merger is effected, shall
19 evidence record ownership in the surviving ~~corporation~~
20 *party to the merger* of all interest of ~~such the~~
21 disappearing ~~corporation~~ *party to the merger* in and to
22 the real property located in that county.

23 *SEC. 25.6. Section 12552 of the Corporations Code is*
24 *amended to read:*

25 12552. Any bequest, devise, gift, grant, or promise
26 contained in a will or other instrument of donation,
27 subscription, or conveyance, which is made to a
28 constituent corporation and which takes effect or
29 remains payable after the merger, inures to the surviving
30 ~~corporation~~ *party to the merger*.

31 *SEC. 26. Section 15679.1 of the Corporations Code is*
32 *amended to read:*

33 15679.1. (a) For purposes of this article,
34 “reorganization” refers to any of the following:

35 (1) A merger pursuant to Article 7.5 (commencing
36 with Section 15678.1).

37 (2) The acquisition by one limited partnership in
38 exchange, in whole or in part, for its partnership interests
39 (or the partnership interests or equity securities of a
40 partnership or other business entity that is in control of



1 the acquiring limited partnership) of partnership
2 interests or equity securities of another limited
3 partnership or other business entity if, immediately after
4 the acquisition, the acquiring limited partnership has
5 control of the other limited partnership or other business
6 entity.

7 (3) The acquisition by one limited partnership in
8 exchange, in whole or in part, for its partnership interests
9 (or the partnership interests or equity securities of a
10 partnership or other business entity which is in control of
11 the acquiring limited partnership) or for its debt
12 securities (or debt securities of a limited partnership or
13 other business entity which is in control of the acquiring
14 limited partnership) which are not adequately secured
15 and which have a maturity date in excess of five years
16 after the consummation of the acquisition, or both, of all
17 or substantially all of the assets of another limited
18 partnership or other business entity.

19 (b) For purposes of this article, “control” means the
20 possession, direct or indirect, of the power to direct or
21 cause the direction of the management and policies of a
22 limited partnership or other business entity.

23 SEC. 27. Section 16901 of the Corporations Code is
24 amended to read:

25 16901. In this article, the following terms have the
26 following meanings:

27 (1) “Constituent other business entity” means any
28 other business entity that is merged with or into one or
29 more partnerships and includes a surviving other
30 business entity.

31 (2) “Constituent partnership” means a partnership
32 that is merged with or into one or more other
33 partnerships or other business entities and includes a
34 surviving partnership.

35 (3) “Disappearing other business entity” means a
36 constituent other business entity that is not the surviving
37 other business entity.

38 (4) “Disappearing partnership” means a constituent
39 partnership that is not the surviving partnership.



1 (5) “Domestic” means organized under the laws of
2 this state when used in relation to any partnership, other
3 business entity, or person (other than an individual).

4 (6) “Foreign other business entity” means any other
5 business entity formed under the laws of any state other
6 than this state or under the laws of the United States or
7 of a foreign country.

8 (7) “Foreign partnership” means a partnership
9 formed under the laws of any state other than this state
10 or under the laws of a foreign country.

11 (8) “General partner” means a partner in a
12 partnership and a general partner in a limited
13 partnership.

14 (9) “Limited liability company” means a limited
15 liability company created under Title 2.5 (commencing
16 with Section 17000), or comparable law of another
17 jurisdiction.

18 (10) “Limited partner” means a limited partner in a
19 limited partnership.

20 (11) “Limited partnership” means a limited
21 partnership created under Chapter 3 (commencing with
22 Section 15611), predecessor law, or comparable law of
23 another jurisdiction.

24 (12) “Other business entity” means a limited
25 partnership, limited liability company, corporation,
26 business trust, real estate investment trust, or an
27 unincorporated association (other than a nonprofit
28 association), but excluding a partnership.

29 (13) “Partner” includes both a general partner and a
30 limited partner.

31 (14) “Surviving other business entity” means an other
32 business entity into which one or more partnerships are
33 merged.

34 (15) “Surviving partnership” means a partnership into
35 which one or more other partnerships or other business
36 entities are merged.

37 SEC. 28. Section 16911 of the Corporations Code is
38 amended to read:

39 16911. (a) Each partnership and other business
40 entity which desires to merge shall approve an



1 agreement of merger. The agreement of merger shall be
2 approved by the number or percentage of partners
3 specified for merger in the partnership agreement of the
4 constituent partnership. If the partnership agreement
5 fails to specify the required partner approval for merger
6 of the constituent partnership, then the agreement of
7 merger shall be approved by that number or percentage
8 of partners specified by the partnership agreement to
9 approve an amendment to the partnership agreement.
10 However, if the merger effects a change for which the
11 partnership agreement requires a greater number or
12 percentage of partners than that required to amend the
13 partnership agreement, then the merger shall be
14 approved by that greater number or percentage. If the
15 partnership agreement contains no provision specifying
16 the vote required to amend the partnership agreement,
17 then the agreement of merger must be approved by all
18 the partners. The agreement of merger shall be approved
19 on behalf of each constituent other business entity by
20 those persons required to approve the merger by the laws
21 under which it is organized. Other persons may be parties
22 to the agreement of merger. The agreement of merger
23 shall state all of the following:

- 24 (1) The terms and conditions of the merger.
- 25 (2) The name and place of organization of the
26 surviving partnership or surviving other business entity,
27 and of each disappearing partnership and disappearing
28 other business entity, and the agreement of merger may
29 change the name of the surviving partnership, which new
30 name may be the same as, or similar to, the name of a
31 disappearing partnership.
- 32 (3) The manner of converting the partnership
33 interests of each of the constituent partnerships into
34 interests or other securities of the surviving partnership
35 or surviving other business entity, and if partnership
36 interests of any of the constituent partnerships are not to
37 be converted solely into interest or other securities of the
38 surviving partnership or surviving other business entity,
39 the cash, property, rights, interests, or securities which
40 the holders of the partnership interest are to receive in



1 exchange for the partnership interests, which cash,
2 property, rights, interests, or securities may be in addition
3 to or in lieu of interests of ~~of~~ *or* other securities of the
4 surviving partnership or surviving other business entity,
5 or that the partnership interests are canceled without
6 consideration.

7 (4) Any other details or provisions as are required by
8 the laws under which any constituent other business
9 entity is organized.

10 (5) Any other details or provisions that are desired,
11 including, without limitation, a provision for the
12 treatment of fractional partnership interests.

13 (b) If the partnership is merging into a limited
14 partnership, then in addition to the approval of the
15 partners as set forth under subdivision (a), the agreement
16 of merger must be approved by all partners who will
17 become general partners of the surviving limited
18 partnership upon the effectiveness of the merger.

19 (c) Notwithstanding its prior approval, an agreement
20 of merger may be amended before the merger takes
21 effect if the amendment is approved by the partners of
22 each constituent partnership, in the same manner as
23 required for approval of the original agreement of
24 merger, and by each of the constituent other business
25 entities.

26 (d) The partners of a constituent partnership may in
27 their discretion, abandon a merger, subject to the
28 contractual rights, if any, of third parties, including other
29 constituent partnerships and constituent other business
30 entities, if the abandonment is approved by the partners
31 of the constituent partnership in the same manner as
32 required for approval of the original agreement of
33 merger.

34 (e) An agreement of merger approved in accordance
35 with subdivision (a) may (1) effect any amendment to
36 the partnership agreement of any domestic constituent
37 partnership or (2) effect the adoption of a new
38 partnership agreement for a domestic constituent
39 partnership if it is the surviving partnership in the
40 merger. Any amendment to a partnership agreement or



1 adoption of a new partnership agreement made pursuant
2 to the foregoing sentence shall be effective at the
3 effective time or date of the merger.

4 (f) The surviving partnership or surviving other
5 business entity shall keep the agreement of merger at the
6 principal place of business of the surviving entity if the
7 surviving entity is a partnership or a foreign other
8 business entity, at the office referred to in Section 1500 if
9 the surviving entity is a domestic corporation, at the
10 office referred to in subdivision (a) of Section 15614 if the
11 surviving entity is a domestic limited partnership or at the
12 office referred to in Section 17057 if the surviving entity
13 is a domestic limited liability company and, upon the
14 request of a partner of a constituent partnership or a
15 holder of interests or other securities of a constituent
16 other business entity, the authorized person on behalf of
17 the partnership or the surviving other business entity
18 shall promptly deliver to the partner or the holder of
19 interests or other securities, at the expense of the
20 surviving partnership or surviving other business entity,
21 a copy of the agreement of merger. A waiver by a partner
22 or holder of interests or other securities of the rights
23 provided in this subdivision shall be unenforceable.

24 SEC. 29. Section 16914 of the Corporations Code is
25 amended to read:

26 16914. (a) When a merger takes effect, all of the
27 following apply:

28 (1) The separate existence of the disappearing
29 partnerships and disappearing other business entities
30 ceases and the surviving partnership or surviving other
31 business entity shall succeed, without other transfer, act
32 or deed, to all the rights and property whether real,
33 personal, or mixed, of each of the disappearing
34 partnerships and disappearing other business entities and
35 shall be subject to all the debts and liabilities of each in the
36 same manner as if the surviving partnership or surviving
37 other business entity had itself incurred them.

38 (2) All rights of creditors and all liens upon the
39 property of each of the constituent partnerships and
40 constituent other business entities shall be preserved

1 unimpaired and may be enforced against the surviving
2 partnership or the surviving other business entity to the
3 same extent as if the debt, liability or duty that gave rise
4 to that lien had been incurred or contracted by it,
5 provided that ~~such~~ *those* liens upon the property of a
6 disappearing partnership or disappearing other business
7 entity shall be limited to the property affected thereby
8 immediately prior to the time the merger is effective.

9 (3) Any action or proceeding pending by or against
10 any disappearing partnership or disappearing other
11 business entity may be prosecuted to judgment, which
12 shall bind the surviving partnership or surviving other
13 business entity, or the surviving partnership or surviving
14 other business entity may be proceeded against or be
15 substituted in the disappearing partnership's or the
16 disappearing other business entity's place.

17 (b) (1) Unless a certificate of merger has been filed to
18 effect the merger, the surviving entity shall promptly
19 notify the Secretary of State of the mailing address of its
20 agent for service of process, its chief executive office, and
21 of any change of address. To enforce an obligation of a
22 limited partnership that has merged with a foreign entity,
23 the Secretary of State shall only be the agent for service
24 of process in an action or proceeding against the surviving
25 foreign other business entity, if the agent designated for
26 the service of process for the entity is a natural person and
27 cannot be found with due diligence or if the agent is a
28 corporation and no person, to whom delivery may be
29 made, can be found with due diligence, or if no agent has
30 been designated and if no one of the officers, partners,
31 managers, members, or agents of the entity can be found
32 after diligent search, and it is so shown by affidavit to the
33 satisfaction of the court. The court then may make an
34 order that service be made by personal delivery to the
35 Secretary of State or to an assistant or deputy secretary of
36 state of two copies of the process together with two copies
37 of the order, and the order shall set forth an address to
38 which the process shall be sent by the Secretary of State.
39 Service in this manner is deemed complete on the 10th
40 day after delivery of the process to the Secretary of State.



1 (2) Upon receipt of the process and order and the fee
2 set forth in Section 12206 of the Government Code, the
3 Secretary of State shall give notice to the entity of the
4 service of the process by forwarding by certified mail,
5 return receipt requested, a copy of the process and order
6 to the address specified in the order.

7 (3) The Secretary of State shall keep a record of all
8 process served upon the Secretary of State and shall
9 record therein the time of service and the Secretary of
10 State's action with respect thereto. The certificate of the
11 Secretary of State, under the Secretary of State's official
12 seal, certifying to the receipt of process, the giving of
13 notice thereof to the entity, and the forwarding of the
14 process, shall be competent and prima facie evidence of
15 the matters stated therein.

16 (c) A partner of the surviving partnership or surviving
17 limited partnership, a member of the surviving limited
18 liability company, a shareholder of the surviving
19 corporation, or a holder of equity securities of the
20 surviving other business entity, is liable for all of the
21 following:

22 (1) All obligations of a party to the merger for which
23 that person was personally liable before the merger.

24 (2) All other obligations of the surviving entity
25 incurred before the merger by a party to the merger, but
26 those obligations may be satisfied only out of property of
27 the entity.

28 (3) All obligations of the surviving entity incurred
29 after the merger takes effect, but those obligations may
30 be satisfied only out of property of the entity if that person
31 is a limited partner, a shareholder in a corporation, or,
32 unless expressly provided otherwise in the articles of
33 organization or other constituent documents, a member
34 of a limited liability company or a holder of equity
35 securities in a surviving other business entity.

36 (d) If the obligations incurred before the merger by a
37 party to the merger are not satisfied out of the property
38 of the surviving partnership or surviving other business
39 entity, the general partners of that party immediately
40 before the effective date of the merger, to the extent ~~such~~



1 *that* party was a partnership or a limited partnership, shall
2 contribute the amount necessary to satisfy that party's
3 obligations to the surviving entity, in the manner
4 provided in Section 16807 or in the limited partnership
5 act of the jurisdiction in which the party was formed, as
6 the case may be, as if the merged party were dissolved.

7 (e) A partner of a domestic disappearing partnership,
8 who does not vote in favor of the merger and does not
9 agree to become a partner, member, shareholder, or
10 holder of interest or equity securities of the surviving
11 partnership or surviving other business entity shall have
12 the right to dissociate from the partnership, as of the date
13 the merger takes effect. Within 10 days after the approval
14 of the merger by the partners as required under this
15 article, each domestic disappearing partnership shall
16 send notice of the approval of the merger to each partner
17 that has not approved the merger, accompanied by a
18 copy of Section 16701 and a brief description of the
19 procedure to be followed under that section if the partner
20 wishes to dissociate from the partnership. A partner that
21 desires to dissociate from a disappearing partnership shall
22 send written notice of ~~such~~ *that* dissociation within 30
23 days after the date of the notice of the approval of the
24 merger. The disappearing partnership shall cause the
25 partner's interest in the entity to be purchased under
26 Section 16701. The surviving entity is bound under
27 Section 16702 by an act of a general partner dissociated
28 under this subdivision, and the partner is liable under
29 Section 16703 for transactions entered into by the
30 surviving entity after the merger takes effect. The
31 disassociation of a partner in connection with a merger
32 pursuant to the terms of this subdivision shall not be
33 deemed a wrongful disassociation under Section 16602.

34 SEC. 30. Section 16915 of the Corporations Code is
35 amended to read:

36 16915. (a) In a merger involving only partnerships,
37 or in a merger to which a domestic partnership and an
38 other business entity is a party but in which no other
39 domestic other business entity is a party, the surviving
40 partnership or surviving foreign other business entity



1 may file with the Secretary of State a statement that one
2 or more partnerships have merged into the surviving
3 partnership or surviving other business entity. A
4 statement of merger shall contain the following:

5 (1) The name of each partnership or other business
6 entity that is a party to the merger.

7 (2) The name of the surviving entity into which the
8 other partnerships or other business entities ~~where~~ *were*
9 merged.

10 (3) The street address of the surviving entity's chief
11 executive office and of an office in this state, if any.

12 (4) Whether the surviving entity is a partnership or an
13 other business entity, specifying the type of the entity.

14 (b) In a merger involving a domestic partnership in
15 which a domestic other business entity is also a party, after
16 approval of the merger by the constituent partnerships
17 and any constituent other business entities, the
18 constituent partnerships and constituent other business
19 entities shall file a certificate of merger in the office of,
20 and on a form prescribed by, the Secretary of State, but
21 if the surviving entity is a domestic corporation or a
22 foreign corporation in a merger in which a domestic
23 corporation is a constituent party, the surviving
24 corporation shall file in the office of the Secretary of State
25 a copy of the agreement of merger and attachments
26 required under paragraph (1) of subdivision (g) of
27 Section 1113. The certificate of merger shall be executed
28 and acknowledged by each domestic constituent
29 partnership by two partners (unless a lesser number is
30 provided in the partnership agreement) and by each
31 foreign constituent partnership by one or more partners,
32 and by each constituent other business entity by those
33 persons required to execute the certificate of merger by
34 the laws under which the constituent other business
35 entity is organized. The certificate of merger shall set
36 forth all of the following:

37 (1) The names and the Secretary of State's file
38 numbers, if any, of each of the constituent partnerships
39 and constituent other business entities, separately
40 identifying the disappearing partnerships and



1 disappearing other business entities and the surviving
2 partnership or surviving other business entity.

3 (2) If a vote of the partners was required under
4 Section 16911, a statement that the principal terms of the
5 agreement of merger were approved by a vote of the
6 partners, which equaled or exceeded the vote required.

7 (3) If the surviving entity is a domestic partnership
8 and not an other business entity, any change to the
9 information set forth in any filed statement of partnership
10 authority of the surviving partnership resulting from the
11 merger, including any change in the name of the
12 surviving partnership resulting from the merger. The
13 filing of a certificate of merger setting forth any changes
14 to any filed statement of partnership authority of the
15 surviving partnership shall have the effect of the filing of
16 a certificate of amendment of the statement of
17 partnership authority by the surviving partnership, and
18 the surviving partnership need not file a certificate of
19 amendment under Section 16015 to reflect those changes.

20 (4) The future effective date or time (which shall be
21 a date or time certain not more than 90 days subsequent
22 to the date of filing) of the merger, if the merger is not
23 to be effective upon the filing of the certificate of merger
24 with the office of the Secretary of State.

25 (5) If the surviving entity is an other business entity or
26 a foreign partnership, the full name, type of entity, legal
27 jurisdiction in which the entity was organized and by
28 whose laws its internal affairs are governed, and the
29 address of the principal place of business of the entity.

30 (6) Any other information required to be stated in the
31 certificate of merger by the laws under which each
32 constituent other business entity is organized.

33 (c) A statement of merger or a certificate of merger,
34 as is applicable under subdivision (a) or (b), shall have
35 the effect of the filing of a cancellation for each
36 disappearing partnership of any statement of partnership
37 authority filed by it.

38 SEC. 31. Section 16916 of the Corporations Code is
39 amended to read:



1 16916. (a) Whenever a domestic or foreign
2 partnership or other business entity having any real
3 property in this state merges with another partnership or
4 other business entity pursuant to the laws of this state or
5 of the state or place in which any constituent partnership
6 or constituent other business entity was organized, and
7 the laws of the state or place of organization (including
8 this state) of any disappearing partnership or
9 disappearing other business entity provide substantially
10 that the making and filing of a statement of merger,
11 agreement of merger or certificate of merger vests in the
12 surviving partnership or surviving other business entity
13 all the real property of any disappearing partnership and
14 disappearing other business entity, the filing for record in
15 the office of the county record of any county in this state
16 in which any of the real property of the disappearing
17 partnership or disappearing other business entity is
18 located of either (1) a certificate of merger or agreement
19 of merger certified by the Secretary of State, or other
20 certificate prescribed by the Secretary of State, or (2) a
21 copy of the statement of merger, agreement of merger or
22 certificate of merger, certified by the Secretary of State
23 or an authorized public official of the state or place
24 pursuant to the laws of which the merger is effected, shall
25 evidence record ownership in the surviving partnership
26 or surviving other business entity of all interest of ~~such~~
27 *that* disappearing partnership or disappearing other
28 business entity in and to the real property located in that
29 county.

30 (b) A filed and, if appropriate, recorded statement of
31 merger, executed and declared to be accurate pursuant
32 to subdivision (c) of Section 16105, stating the name of a
33 partnership or other business entity that is a party to the
34 merger in whose name property was held before the
35 merger and the name of the surviving entity, but not
36 containing all of the other information required by
37 Section 16915, operates with respect to the partnerships
38 or other business entities named to the extent provided
39 in subdivision (a).



1 (c) Recording of the certificate of merger in
2 accordance with subdivision (a) shall create, in favor of
3 bona fide purchasers or encumbrancers for value, a
4 conclusive presumption that the merger was validly
5 completed.

6 SEC. 32. Section 17600 of the Corporations Code is
7 amended to read:

8 17600. (a) For purposes of this chapter,
9 “reorganization” refers to any of the following:

10 (1) A merger pursuant to Chapter 12 (commencing
11 with Section 17550).

12 (2) The acquisition by one limited liability company,
13 in exchange, in whole or in part, for its membership
14 interests (or the membership interests or equity
15 securities of a limited liability company or other business
16 entity that is in control of the acquiring limited liability
17 company), of membership interests or equity securities
18 of another limited liability company or other business
19 entity if, immediately after the acquisition, the acquiring
20 limited liability company has control of the other limited
21 liability company or other business entity.

22 (3) The acquisition by one limited liability company in
23 exchange in whole or in part for its membership interests
24 (or the membership interests or equity securities of a
25 limited liability company or other business entity that is
26 in control of the acquiring limited liability company) or
27 for its debt securities (or debt securities of a limited
28 liability company or other business entity that is in control
29 of the acquiring limited liability company) that are not
30 adequately secured and that have a maturity date in
31 excess of five years after the consummation of the
32 acquisition, or both, of all or substantially all of the assets
33 of another limited liability company or other business
34 entity.

35 (b) For purposes of this chapter, “control” means the
36 possession, direct or indirect, of the power to direct or
37 cause the direction of the management and policies of a
38 limited liability company or other business entity.

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