STATE OF OKLAHOMA

1st Session of the 45th Legislature (1995)

COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 590 By: Douglass and Hendrick

COMMITTEE SUBSTITUTE

(Business organizations - Oklahoma General Corporation Act - Oklahoma Limited Liability Company Act - Professional Corporation Act - Oklahoma Limited Liability Partnership Act - repealer - codification - effective date)

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 18 O.S. 1991, Section 801, is amended to read as follows:

Section 801. This act is known and may be cited as the "Professional ~~Corporation~~ Entity Act".

SECTION 2. AMENDATORY 18 O.S. 1991, Section 803, as last amended by Section 1, Chapter 216, O.S.L. 1994 (18 O.S. Supp. 1994, Section 803), is amended to read as follows:

Section 803. A. As used herein, unless the context clearly indicates that a different meaning is intended:

1. "Associated act" means the Oklahoma General Corporation Act in the case of a corporation, the Oklahoma Revised Uniform Limited Partnership Act in the case of a limited partnership act, or the Oklahoma Limited Liability Act in the case of a limited liability company;

2. "Interest" means a share of stock in a corporation, a partnership interest in a limited partnership, or a membership interest in a limited liability company;

3. "Owner" means a shareholder in the case of a corporation, a general or limited partner in the case of a limited partnership, or a member in the case of a limited liability company;

4. "Manager" means a director or officer in the case of a corporation, a general partner in the case of a limited partnership, or a manager in the case of a limited liability company;

5. "Professional ~~corporation~~ entity" means a domestic corporation ~~organized under the Professional Corporation Act~~, limited partnership, or limited liability company formed for the purpose of rendering professional service;

~~2.~~ 6. "Professional service" means the personal service rendered by:

a. a physician, surgeon or doctor of medicine pursuant to a license under Sections 481 through 524 of Title 59 of the Oklahoma Statutes~~, Sections 481 through 524,~~ and any subsequent laws regulating the practice of medicine,

b. an osteopathic physician or surgeon pursuant to a license under Sections 621 through 643 of Title 59 of the Oklahoma Statutes~~, Sections 621 through 643,~~ and any subsequent laws regulating the practice of ~~osteopathy~~ osteopathic medicine,

c. a ~~chiropractor~~ chiropractic physician pursuant to a license under Sections 161.1 through 161.20 of Title 59 of the Oklahoma Statutes~~, Sections 161 through 170,~~ and any subsequent laws regulating the practice of chiropractic,

d. a ~~podiatrist~~ podiatric physician pursuant to a license under Sections 136 through 160.2 of Title 59 of the Oklahoma Statutes~~, Sections 136 through 160.2,~~ and any subsequent laws regulating the practice of ~~chiropody~~ podiatric medicine,

e. an optometrist pursuant to a license under Sections 581 through 606 of Title 59 of the Oklahoma Statutes~~, Sections 581 through 606,~~ and any subsequent laws regulating the practice of optometry,

f. a veterinarian pursuant to a license under Sections 698.1 through 698.19 of Title 59 of the Oklahoma Statutes~~, Sections 698.1 through 698.19,~~ and any subsequent laws regulating the practice of veterinary medicine,

g. an architect pursuant to a license under Sections 45.1 through 45.24 of Title 59 of the Oklahoma Statutes~~, Sections 45.1 through 45.24,~~ and any subsequent laws regulating the practice of architecture,

h. an attorney pursuant to his authority to practice law granted by the Supreme Court of the State of Oklahoma~~.~~,

i. a dentist pursuant to a license under Sections 328.1 through 328.50 of Title 59 of the Oklahoma Statutes~~, Sections 328.1 through 328.50,~~ and any subsequent laws regulating the practice of dentistry,

j. a certified public accountant or a public accountant pursuant to his authority to practice accounting under Sections 15.1 through 15.37 of Title 59 of the Oklahoma Statutes~~, Sections 15.1 through 15.35,~~ and any subsequent laws regulating the practice of public accountancy,

k. a psychologist pursuant to a license under Sections 1351 through 1375 of Title 59 of the Oklahoma Statutes~~, Sections 1351 through 1375,~~ and any subsequent laws regulating the practice of psychology,

l. a physical therapist pursuant to a license under Sections 887.1 through 887.17 of Title 59 of the

Oklahoma Statutes~~, Sections 887.1 through 887.17,~~ and any subsequent laws regulating the practice of physical therapy,

m. a registered nurse pursuant to a license under Sections 567.1 through 567.16 of Title 59 of the Oklahoma Statutes~~, Sections 567.1 through 567.16,~~ and any other subsequent laws regulating the practice of nursing,

n. a professional engineer pursuant to a license under Sections 475.1 through ~~475.22~~ 475.22b of Title 59 of the Oklahoma Statutes, and any subsequent laws relating to the practice of engineering,

o. a land surveyor pursuant to a license under Sections ~~475.24~~ 475.1 through ~~475.37~~ 475.22b of Title 59 of the Oklahoma Statutes, and any subsequent laws relating to the practice of land surveying;

~~3.~~ 7. "Related professional services" means those services which are combined for professional ~~corporation~~ entity purposes as follows:

a. any combination of the following professionals:

(1) a physician, surgeon or doctor of medicine pursuant to a license under Sections 481 through 524 of Title 59 of the Oklahoma Statutes, and any subsequent laws regulating the practice of medicine,

(2) an osteopathic physician or surgeon pursuant to a license under Sections ~~621~~ 620 through ~~643~~ 645 of Title 59 of the Oklahoma Statutes, and any subsequent laws relating to the practice of ~~osteopathy~~ osteopathic medicine,

(3) a dentist pursuant to a license under Sections 328.1 through 328.50 of Title 59 of the Oklahoma

Statutes, and any subsequent laws regulating the practice of dentistry,

(4) a ~~chiropractor~~ chiropractic physician pursuant to a license under Sections 161.1 through 161.20 of Title 59 of the Oklahoma Statutes~~, Sections 161 through 170,~~ and any subsequent laws regulating the practice of chiropractic,

(5) a psychologist pursuant to a license under Sections 1351 through 1376 of Title 59 of the Oklahoma Statutes~~, Sections 1351 through 1375,~~ and any subsequent laws regulating the practice of psychology,

(6) an optometrist pursuant to a license under Sections 581 through 606 of Title 59 of the Oklahoma Statutes, and any subsequent laws regulating the practice of optometry, or

(7) a ~~podiatrist~~ podiatric physician pursuant to a license under Sections 136 through 160.2 of Title 59 of the Oklahoma Statutes, and any subsequent laws regulating the practice of ~~podiatry~~ podiatric medicine, or

b. any combination of the following professions:

(1) an architect pursuant to a license under Sections 45.1 through ~~45.24~~ 46.37 of Title 59 of the Oklahoma Statutes, and any subsequent laws regulating the practice of architecture,

(2) a professional engineer pursuant to a license under Sections 475.1 through ~~475.22~~ 475.22b of Title 59 of the Oklahoma Statutes, and any subsequent laws relating to the practice of engineering, or

(3) a land surveyor pursuant to a license under Sections ~~475.24~~ 475.1 through ~~475.37~~ 475.22b of Title 59 of the Oklahoma Statutes, and any subsequent laws relating to the practice of land surveying;

~~4.~~ 8. "Regulating board" means the board which is charged with the licensing and regulation of the practice of the profession which the professional ~~corporation~~ entity is organized to render;

~~5.~~ 9. "Individual", "incorporator", and ~~"shareholder"~~ "owner" each include the trustee of an express trust created by a person duly licensed to render a professional service who has the right to revoke ~~said~~ the trust and who is serving as ~~the~~ a trustee of ~~said~~ the trust. Any certificate required by the Professional ~~Corporation~~ Entity Act to be issued to an individual incorporator or ~~shareholder~~ owner may be issued to the grantor on behalf of a trust. All references in the Professional ~~Corporation~~ Entity Act to death and incapacity of ~~a shareholder~~ an owner shall include the death and incapacity of the grantor of a trust which ~~own~~ owns stock in a professional ~~corporation~~ entity;

~~6.~~ 10. "Incapacity" of ~~a shareholder~~ an owner means a determination by a court of competent jurisdiction, or otherwise by two independent licensed physicians, that the ~~shareholder~~ owner is fully incapacitated or is partially incapacitated to the extent that the ~~shareholder~~ owner is not capable of rendering the professional service for which the professional ~~corporation~~ entity was organized; and

~~7.~~ 11. "Other personal representative" ~~include~~ includes the successor trustee of an express trust owning stock in a professional ~~corporation~~ entity, which trust was created by a person duly licensed to render the professional service for which the professional ~~corporation~~ entity was organized, who has the right to revoke the trust, and who is the original trustee of the trust.

B. The definitions of the ~~Oklahoma General Corporation Act~~ applicable associated act shall apply to this act, unless the context clearly indicates that a different meaning is intended.

SECTION 3. AMENDATORY 18 O.S. 1991, Section 804, is amended to read as follows:

Section 804. ~~One or more individuals, each of whom is licensed to render a professional service, may incorporate a professional corporation by filing a certificate of incorporation~~ A professional entity may be formed by filing the appropriate instrument required by the associated act with the Secretary of State. The individual or individuals forming the professional entity shall be duly licensed in accordance with the provisions of this state's licensing laws for the profession and in good standing within the profession to be practiced through the professional entity. ~~Such certificate of incorporation~~ The instrument shall meet the requirements of the ~~Oklahoma General Corporation Act~~ applicable associated act and ~~in addition thereto~~ shall contain the following:

~~(a) the~~ 1. The profession or related professions to be practiced through the professional ~~corporation~~ entity; and

~~(b) the names and residence addresses of all of the original shareholders, directors and officers of the professional corporation; (c) a~~ 2. A certificate by the regulating board of the profession or related professions involved that each of the ~~incorporators, directors and shareholders~~ persons who are to become owners or managers of the professional entity and who are to engage in the practice of the profession or related profession is duly licensed in accordance with the provisions of this state's licensing laws for the profession or related profession to practice such profession.

SECTION 4. AMENDATORY 18 O.S. 1991, Section 805, is amended to read as follows:

Section 805. The ~~Oklahoma General Corporation Act~~ respective associated act shall be applicable to each professional ~~corporations~~ entity, and ~~they~~ each professional entity shall enjoy the powers and privileges and be subject to the duties, restrictions, and liabilities of other ~~corporations~~ similarly situated business entities, except where inconsistent with ~~the letter and purpose of~~ this act. This act shall take precedence in the event of any conflict with provisions of the ~~Oklahoma General Corporation Act~~ applicable associated act or other laws.

SECTION 5. AMENDATORY 18 O.S. 1991, Section 806, is amended to read as follows:

Section 806. A professional ~~corporation~~ entity may be ~~organized pursuant to the provisions of this act~~ formed for the purpose of rendering one specific type of professional service or related professional services and services ancillary thereto and shall not engage in any business other than rendering the professional service or services which it was organized to render and services ancillary thereto; provided, however, that a professional ~~corporation~~ entity may own real and personal property necessary or appropriate for rendering the type of professional services it was organized to render and may invest its funds in real estate, mortgages, stocks, bonds and any other type of investments.

SECTION 6. AMENDATORY 18 O.S. 1991, Section 807, is amended to read as follows:

Section 807. The ~~corporate~~ name of every professional ~~corporation organized under this act~~ entity shall end with ~~the words "Corporation", "Incorporated" or "Professional Corporation" or the abbreviations "Corp.", "Inc." or "P.C."~~ one or more of the words or abbreviations permitted in the applicable associated acts; provided, that such words or abbreviations shall be modified by the word "professional" or some abbreviation of the combination, including, without limitation: "P.C.", "P.L.P." or "P.L.L.C.". Provided

further, each of the regulating boards may by rule adopt further requirements as to the names of professional ~~corporations~~ entities organized to render professional services within the jurisdiction of ~~such~~ the regulating board.

SECTION 7. AMENDATORY 18 O.S. 1991, Section 809, as amended by Section 2, Chapter 345, O.S.L. 1993 (18 O.S. Supp. 1994, Section 809), is amended to read as follows:

Section 809. ~~A professional corporation may issue the shares of its capital stock to individuals who are~~ A. Except as provided in Section 815 of this title, no individual shall hold an interest in a professional entity unless the person is duly licensed in accordance with the provisions of this state's licensing laws for the profession or related profession to render the same professional services or related professional services as those for which the ~~corporation~~ entity is organized~~. A shareholder may voluntarily transfer his shares in a professional corporation to one or more individuals who are duly licensed to render the same professional services or related professional services as those for which the corporation is organized. Any shares issued in violation of this section are void. The voluntary transfer of any shares in violation of this section is void. No shares may be transferred upon the books of the professional corporation or issued by the professional corporation until there is presented to and filed with the corporation a certificate by the regulating board stating that the individual or individuals to whom the transfer is to be made or the shares issued is duly licensed to render the same professional services or related professional services as those for which the corporation is organized~~; provided, however, an individual who is licensed in another state, district or territory of the United States to render the same professional services or related services for which the entity is organized may hold an interest in the professional entity but may not practice in this state unless the

person is allowed reciprocity to practice in this state pursuant to this state's licensing laws for the profession or related profession.

B. Any issuance or transfer of an interest in violation of this section shall be null and void.

SECTION 8. AMENDATORY 18 O.S. 1991, Section 810, as amended by Section 3, Chapter 345, O.S.L. 1993 (18 O.S. Supp. 1994, Section 810), is amended to read as follows:

Section 810. No person may be a ~~director or officer, other than the secretary,~~ manager of a professional ~~corporation who~~ entity unless the person is ~~not a person~~ duly licensed in accordance with the provisions of this state's licensing laws for the profession or related profession to render the same professional services or related professional services as those for which the ~~corporation~~ entity is organized. No person may be ~~a shareholder~~ an owner of a professional ~~corporation who~~ entity unless the person is ~~not~~ an individual duly licensed to render the same professional services or related professional services as those for which the ~~corporation~~ entity is ~~organized~~ formed.

SECTION 9. AMENDATORY 18 O.S. 1991, Section 811, is amended to read as follows:

Section 811. A professional ~~corporation~~ entity may render professional services in this state only through its ~~officers~~ owners, managers, employees, and agents who are duly licensed in accordance with the provisions of this state's licensing laws to render professional services; provided, however, this provision shall not be interpreted to include in the term "employee", as used herein, clerks, secretaries, bookkeepers, technicians, and other assistants who are not usually and ordinarily considered by custom and practice to be rendering professional services to the public for which a license is required.

SECTION 10. AMENDATORY 18 O.S. 1991, Section 812, is amended to read as follows:

Section 812. This act does not alter any law applicable to the relationship between a person rendering professional services and a person receiving ~~such~~ the services, including liability arising out of ~~such~~ the professional services; provided, however, an owner or manager shall not be jointly and severally liable for the obligations chargeable to the professional entity or vicariously liable for the acts and omissions of another owner or manager or an employee or agent of the professional entity.

SECTION 11. AMENDATORY 18 O.S. 1991, Section 813, is amended to read as follows:

Section 813. ~~Nothing~~ Subject to the provisions of Section 819 of this title, nothing in this act shall restrict or limit in any manner the authority and duty of the regulating boards for the licensing of individual persons rendering professional services or the practice of the profession which is within the jurisdiction of ~~such~~ the regulating board, notwithstanding that ~~such~~ the person is an ~~officer, director, shareholder,~~ owner, manager, or employee of a professional ~~corporation~~ entity and rendering such professional services or engaging in the practice of ~~such~~ the profession through ~~such~~ the professional ~~corporation~~ entity.

SECTION 12. AMENDATORY 18 O.S. 1991, Section 814, is amended to read as follows:

Section 814. No professional ~~corporation~~ entity may do any act which is prohibited to be done by individual persons licensed to practice a profession which the professional ~~corporation~~ entity is organized to render.

SECTION 13. AMENDATORY 18 O.S. 1991, Section 815, as amended by Section 4, Chapter 345, O.S.L. 1993 (18 O.S. Supp. 1994, Section 815), is amended to read as follows:

Section 815. ~~The~~ A. If the professional entity is a corporation, the certificate of incorporation, bylaws, or other agreement may provide for the purchase or redemption of the shares of any shareholder upon the death, incapacity, or disqualification of ~~such~~ the shareholder~~, or the same may be provided in the bylaws or by private agreement~~. In the absence of a provision in the certificate of incorporation, or the bylaws, or ~~a private~~ by other agreement, the professional corporation shall purchase the shares of a deceased, incapacitated, or disqualified shareholder ~~or a shareholder who is incapacitated or who is no longer qualified to own shares~~ in ~~such~~ the corporation within ninety (90) days after the shareholder's death, incapacity, or disqualification ~~of the shareholder~~, as the case may be. The price for such shares shall be the book value as of the end of the month immediately preceding the shareholder's death, incapacity, or disqualification ~~of the shareholder~~. Book value shall be determined from the books and records of the professional corporation in accordance with the regular method of accounting used by the corporation. If the corporation shall fail to purchase the shares by the end of the ninety-day period, ~~then~~ the executor or administrator or other personal representative of the deceased, incapacitated, or disqualified shareholder may bringan action in the district court of the county in which the principal office or place of practice of the professional corporation is located for the

enforcement of this provision. If the plaintiff is successful in ~~such~~ the action, ~~he~~ the plaintiff shall be entitled to recover the book value of the shares involved, a reasonable attorney's fee and costs. The professional corporation shall repurchase ~~such~~ the shares without regard to restrictions upon the repurchase of shares provided for in the Oklahoma General Corporation Act.

B. If there is only one shareholder of a professional corporation, and the shareholder dies or becomes incapacitated, the executor ~~or~~, administrator, or other personal representative of the shareholder shall have the authority to sell the shares of capital stock owned by the shareholder to a qualified purchaser~~,~~ or to cause a dissolution of the professional corporation as provided by law. The vesting of ownership of shares of stock in a professional corporation in the executor ~~or~~, administrator, or other personal representative shall be solely for the purposes set forth ~~above~~ in this section and shall not be deemed to contravene any other provisions of this act.

C. If the professional entity is a limited partnership or a limited liability company, an owner's disqualification shall be deemed a withdrawal, and the professional entity shall respond to the disqualification as it would any other withdrawal.

SECTION 14. AMENDATORY 18 O.S. 1991, Section 818, is amended to read as follows:

Section 818. The regulating boards of the respective professions described in Section 803 of this title are hereby authorized and directed to issue the certificates required by Section 804 of this title upon receipt of an affidavit or other

instrument reciting the names and addresses of the prospective owners and managers. The regulating boards may charge and collect a reasonable fee ~~not to exceed Five Dollars ($5.00) per person so certified to be duly licensed by such regulating board~~ for issuance of the certificate. The fee shall be deposited and expended as provided by law for other fees collected by ~~each~~ the respective regulating board.

SECTION 15. AMENDATORY 18 O.S. 1991, Section 819, is amended to read as follows:

Section 819. All laws and rules and parts of laws and rules in conflict with any of the provisions of this act or otherwise restricting the forms of organization available to persons providing professional services shall be inapplicable to professional ~~corporations organized~~ entities formed under this act; provided, however, that nothing in this act shall be construed to supersede the provisions of ~~59 O.S. 1951,~~ Sections 581 through 592, ~~both inclusive,~~ Sections 601 through 606, ~~both inclusive,~~ or Sections 941 through 947~~, both inclusive,~~ of Title 59 of the Oklahoma Statutes, as amended. In the event of ~~the~~ any conflict of any of the provisions of this act with any of the above cited sections, ~~then~~ the cited sections shall take precedence over this act and this act shall be construed accordingly.

SECTION 16. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 871 of Title 18, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Uniform Unincorporated Nonprofit Association Act".

SECTION 17. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 872 of Title 18, unless there is created a duplication in numbering, reads as follows:

As used in this act:

1. "Member" means a person who, under the rules or practices of a nonprofit association, may participate in the selection of persons authorized to manage the affairs of the nonprofit association or in the development of policy of the nonprofit association;

2. "Nonprofit association" means an unincorporated organization consisting of two (2) or more members joined by mutual consent for a common nonprofit purpose. However, joint tenancy, tenancy in common or tenancy by the entireties does not by itself establish a nonprofit association, even if the co-owners share use of the property for a nonprofit purpose;

3. "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality or any other legal or commercial entity; and

4. "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico or any territory or insular possession subject to the jurisdiction of the United States.

SECTION 18. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 873 of Title 18, unless there is created a duplication in numbering, reads as follows:

Principles of law and equity supplement this act unless displaced by a particular provision of this act.

SECTION 19. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 874 of Title 18, unless there is created a duplication in numbering, reads as follows:

Subject to the limitations of Section 1 of Article XXII of the Oklahoma Constitution, real and personal property in this state may be acquired, held, encumbered and transferred by a nonprofit association, whether or not the nonprofit association or a member has any other relationship to this state.

SECTION 20. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 875 of Title 18, unless there is created a duplication in numbering, reads as follows:

A. A nonprofit association in its name may acquire, hold, encumber, or transfer an estate or interest in real or personal property.

B. A nonprofit association may be a legatee, devisee, or beneficiary of a trust or contract.

C. A member is not an owner of nonprofit association property and has no interest in nonprofit association property which can be transferred either voluntarily or involuntarily.

SECTION 21. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 876 of Title 18, unless there is created a duplication in numbering, reads as follows:

A. A nonprofit association shall execute and record a statement of authority to transfer an estate or interest in real property in the name of the nonprofit association. Failure to record a statement of authority does not invalidate or in any manner limit the effectiveness of an otherwise authorized transfer of an estate or interest in real property in the name of the nonprofit association or impose liability on any member authorized to act and acting on behalf of the nonprofit association.

B. An estate or interest in real property in the name of a nonprofit association may be transferred by a person who is authorized by the nonprofit association in a statement of authority recorded in the office of the county clerk in the county in which a transfer of the property would be recorded.

C. A statement of authority must set forth:

1. The name of the nonprofit association and that it is a nonprofit association;

2. The address in this state, including the street address, if any, of the nonprofit association, or, if the nonprofit association does not have an address in this state, its address out of state;

3. The name or title of a person authorized to transfer an estate or interest in the real property held in the name of the nonprofit association; and

4. The action, procedure, or vote of the nonprofit association which authorizes the person to transfer the estate or interest in the real property of the nonprofit association and which authorizes the person to execute the statement of authority.

D. A statement of authority must be executed and acknowledged in the same manner as a deed to be recorded by a person who is not the person authorized to transfer the estate or interest.

E. A county clerk may collect a fee for recording a statement of authority in the amount authorized for recording a transfer of real property.

F. An amendment, including a cancellation, of a statement of authority must meet the requirements for execution and recording of an original statement. Unless canceled earlier, a recorded statement of authority or its most recent amendment is canceled by operation of law five (5) years after the date of the most recent recording.

G. If the record title to real property is in the name of a nonprofit association and the statement of authority is recorded in the office of the county clerk of the county in which a transfer of real property would be recorded, the authority of the person named in a statement of authority is conclusive in favor of a person who gives value without notice that the person lacks authority.

SECTION 22. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 877 of Title 18, unless there is created a duplication in numbering, reads as follows:

A. A nonprofit association is a legal entity separate from its members for the purposes of determining and enforcing rights, duties and liabilities in contract and tort.

B. A person is not liable for a breach of a nonprofit association's contract merely because the person:

1. Is a member of the nonprofit association;

2. Is authorized to participate in the management of the affairs of the nonprofit association; or

3. Is a person considered to be a member by the nonprofit association.

C. A person is not liable for a tortious act or omission for which a nonprofit association is liable merely because the person:

1. Is a member of the nonprofit association;

2. Is authorized to participate in the management of the affairs of the nonprofit association; or

3. Is a person considered as a member by the nonprofit association.

D. A tortious act or omission of a member or other person for which a nonprofit association is liable is not imputed to a person merely because the person:

1. Is a member of the nonprofit association;

2. Is authorized to participate in the management of the affairs of the nonprofit association; or

3. Is a person considered as a member by the nonprofit association.

E. A member of, or a person considered to be a member by, a nonprofit association may assert a claim against the nonprofit association. A nonprofit association may assert a claim against a member or a person considered to be a member by the nonprofit association.

SECTION 23. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 878 of Title 18, unless there is created a duplication in numbering, reads as follows:

A. A nonprofit association, in its name, may institute, defend, intervene, or participate in a judicial, administrative, or other governmental proceeding or in an arbitration, mediation, or any other form of alternative dispute resolution.

B. A nonprofit association may assert a claim in its name on behalf of its members if:

1. One or more members of the nonprofit association have standing to assert a claim in their own right;

2. The interests the nonprofit association seeks to protect are germane to its purposes; and

3. Neither the claim asserted nor the relief requested requires the participation of a member.

SECTION 24. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 879 of Title 18, unless there is created a duplication in numbering, reads as follows:

A judgment or order against a nonprofit association is not, by itself, a judgment or order against a member.

SECTION 25. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 880 of Title 18, unless there is created a duplication in numbering, reads as follows:

Subject to the provisions of Sections 651 through 686 of Title 60 of the Oklahoma Statutes, if a nonprofit association has been inactive for three (3) years or longer, a person in possession or control of personal property of the nonprofit association may transfer the property if:

1. A document of a nonprofit association specifies a person to whom transfer is to be made under these circumstances, to that person; or

2. No person is so specified, to a nonprofit association or nonprofit corporation pursuing broadly similar purposes, or to a government or governmental subdivision, agency or instrumentality.

SECTION 26. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 881 of Title 18, unless there is created a duplication in numbering, reads as follows:

A. A nonprofit association may file in the office of the Secretary of State a statement appointing an agent authorized to receive service of process.

B. A statement appointing an agent must set forth:

1. The name of the nonprofit association and that it is a nonprofit association;

2. The address in this state, including the street address, if any, of the nonprofit association, or, if the nonprofit association does not have an address in this state, its address out of state; and

3. The name of the person in this state authorized to receive service of process and the person's address, including the street address, in this state.

C. A statement appointing an agent must be signed and acknowledged by a person authorized to manage the affairs of a nonprofit association. The statement must also be signed and acknowledged by the person's appointed agent, who thereby accepts the appointment. The appointed agent may resign by filing a resignation in the office of the Secretary of State and giving notice to the nonprofit association.

D. A filing officer may collect a fee for filing a statement appointing an agent to receive service of process, an amendment, or a resignation in the same amount charged for filing similar documents.

E. An amendment to a statement appointing an agent to receive service of process must meet the requirements for execution of an original statement.

SECTION 27. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 882 of Title 18, unless there is created a duplication in numbering, reads as follows:

A claim for relief against a nonprofit association does not abate merely because of a change in its members or persons authorized to manage the affairs of the nonprofit association.

SECTION 28. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 883 of Title 18, unless there is created a duplication in numbering, reads as follows:

For purposes of venue, a nonprofit association is a resident of a county in which it has an office and of any county in which an estate or interest in real property owned in its name is situated.

SECTION 29. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 884 of Title 18, unless there is created a duplication in numbering, reads as follows:

In an action or proceeding against a nonprofit association, a summons and complaint must be served in compliance with Section 2004 of Title 12 of the Oklahoma Statutes.

SECTION 30. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 885 of Title 18, unless there is created a duplication in numbering, reads as follows:

This act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this act among states enacting it.

SECTION 31. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 886 of Title 18, unless there is created a duplication in numbering, reads as follows:

If, before the effective date of this act, an estate or interest in real or personal property was, by the terms of the transfer,

purportedly transferred to a nonprofit association, but, under the law, the estate or interest was not vested in the association but instead in a fiduciary to hold the estate or interest for members of the nonprofit association, on or after the effective date of this act, the fiduciary may transfer the estate or interest to the nonprofit association in its name or the nonprofit association by appropriate proceedings may require that the estate or interest be transferred to it in its name.

SECTION 32. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 887 of Title 18, unless there is created a duplication in numbering, reads as follows:

This act does not affect an action or proceeding commenced or right accrued before this act takes effect.

SECTION 33. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 888 of Title 18, unless there is created a duplication in numbering, reads as follows:

The provisions of this act shall be applicable to every unincorporated nonprofit association, except to the extent special statutory provisions in this state concerning a nonprofit association conflict with the provisions of this act, in which case the special provisions shall govern.

SECTION 34. AMENDATORY 18 O.S. 1991, Section 1006, as amended by Section 1, Chapter 99, O.S.L. 1992 (18 O.S. Supp. 1994, Section 1006), is amended to read as follows:

Section 1006.

CERTIFICATE OF INCORPORATION; CONTENTS

A. The certificate of incorporation shall set forth:

1. The name of the corporation which shall contain one of the words "association", "company", "corporation", "club", "foundation", "fund", "incorporated", "institute", "society", "union", "syndicate", or "limited" or one of the abbreviations "co.", "corp.", "inc.", "ltd.", or words or abbreviations of like import in

other languages provided that such abbreviations are written in Roman characters or letters, and which shall be such as to distinguish it upon the records in the Office of the Secretary of State from:

a. names of other corporations organized under the laws of this state then existing or which existed at any time during the preceding three (3) years, or

b. names of foreign corporations registered in accordance with the laws of this state then existing or which existed at any time during the preceding three (3) years, or

c. names of then existing limited partnerships whether organized pursuant to the laws of this state or licensed or registered as foreign limited partnerships in this state, or

d. trade names or fictitious names filed with the Secretary of State, or

e. corporate or limited partnership names reserved with the Secretary of State;

2. The address, including the street, number, city, and county, of the corporation's registered office in this state, and the name of the corporation's registered agent at ~~such~~ that address;

3. The nature of the business or purposes to be conducted or promoted. It shall be sufficient to state, either alone or with other businesses or purposes, that the purpose of the corporation is to engage in any lawful act or activity for which corporations may be organized under the general corporation law of ~~Oklahoma~~ this state, and by such statement all lawful acts and activities shall be within the purposes of the corporation, except for express limitations, if any;

4. If the corporation is to be authorized to issue only one class of stock, the total number of shares of stock which the

corporation shall have authority to issue and the par value of ~~each of such~~ the shares, or a statement that all ~~such~~ shares are to be without par value. If the corporation is to be authorized to issue more than one class of stock, the certificate of incorporation shall set forth the total number of shares of all classes of stock which the corporation shall have authority to issue and the number of shares of each class, and shall specify each class the shares of which are to be without par value and each class the shares of which are to have par value and the par value of the shares of each ~~such~~ class. The provisions of this paragraph shall not apply to corporations which are not organized for profit and which are not to have authority to issue capital stock. In the case of such corporations, the fact that they are not to have authority to issue capital stock shall be stated in the certificate of incorporation. The conditions of membership of such corporations shall likewise be stated in the certificate of incorporation or the certificate may provide that the conditions of membership shall be stated in the bylaws;

5. The name and mailing address of the incorporator or incorporators;

6. If the powers of the incorporator or incorporators are to terminate upon the filing of the certificate of incorporation, the names and mailing addresses of the persons who are to serve as directors until the first annual meeting of shareholders or until their successors are elected and qualify; and

7. If the corporation is not for profit~~:~~,

~~a.~~ that the corporation does not afford pecuniary gain, incidentally or otherwise, to its members as such~~,~~

~~b. the name and mailing address of each trustee or director, and~~

~~c. the number of trustees or directors to be elected at the first meeting~~.

a. The restriction on affording pecuniary gain to members shall not prevent a not-for-profit corporation:

(1) from operating as a cooperative from rebating excess revenues to patrons who may also be members, or

(2) from making distributions to members upon dissolution in accordance with the provisions of this act.

b. If the certificate of incorporation or the bylaws of a not-for-profit corporation do not provide for members, the directors shall be deemed members for purposes of this act and any action required to be taken by the members may be taken by the directors.

B. In addition to the matters required to be set forth in the certificate of incorporation pursuant to the provisions of subsection A of this section, the certificate of incorporation may also contain any or all of the following matters:

1. Any provision for the management of the business and for the conduct of the affairs of the corporation, and any provision creating, defining, limiting ~~and~~, or regulating the powers of the corporation, the directors, and the shareholders, or any class of the shareholders, or the members of a nonstock corporation, if such provisions are not contrary to the laws of this state. Any provision which is required or permitted by any provision of the Oklahoma General Corporation Act, Section 1001 et seq. of Title 18 of the Oklahoma Statutes, to be stated in the bylaws may instead be stated in the certificate of incorporation;

2. The following provisions, in substantially the following form: "Whenever a compromise or arrangement is proposed between this corporation and its creditors or any class of them ~~and/or~~ or between this corporation and its shareholders or any class of them, any court of equitable jurisdiction within ~~the State of Oklahoma~~

this state, on the application in a summary way of this corporation or of any creditor or shareholder thereof or on the application of any receiver or receivers appointed for this corporation under the provisions of Section 1106 of this title or on the application of trustees in dissolution or of any receiver or receivers appointed for this corporation under the provisions of Section 1100 of this title, may order a meeting of the creditors or class of creditors, ~~and/or~~ or of the shareholders or class of shareholders of ~~this~~ the corporation, as the case may be, to be summoned in ~~such~~ the manner as the court directs. If a majority in number representing three-fourths (3/4) in value of the creditors or class of creditors, ~~and/or~~ or of the shareholders or class of shareholders of this corporation, as the case may be, agree to any compromise or arrangement and to any reorganization of ~~this~~ the corporation as a consequence of ~~such~~ a compromise or arrangement, the compromise or arrangement and the reorganization, if sanctioned by the court to which the application has been made, shall be binding on all ~~the~~ creditors or class of creditors, ~~and/or~~ and on all ~~the~~ shareholders or class of shareholders, of ~~this~~ the corporation, as the case may be, and also on ~~this~~ the corporation.";

3. ~~Such~~ Any provisions as may be desired granting to the holders of the stock of the corporation, or the holders of any class or series of a class thereof, the preemptive right to subscribe to any or all additional issues of stock of the corporation of any or all classes or series thereof, or to any securities of the corporation convertible into such stock. No shareholder shall have any preemptive right to subscribe to an additional issue of stock or to any security convertible into ~~such~~ stock unless, and except to the extent that, such right is expressly granted ~~to him~~ in the certificate of incorporation. Preemptive rights, if granted, shall not extend to fractional shares;

4. Provisions requiring, for any corporate action, the vote of a larger portion of the stock or of any class or series thereof, or of any other securities having voting power, or a larger number of the directors, than is required by the provisions of the Oklahoma General Corporation Act;

5. A provision limiting the duration of the corporation's existence to a specified date; otherwise, the corporation shall have perpetual existence;

6. A provision imposing personal liability for the debts of the corporation on its shareholders or members to a specified extent and upon specified conditions; otherwise, the shareholders or members of a corporation shall not be personally liable for the payment of the corporation's debts, except as they may be liable by reason of their own conduct or acts;

7. A provision eliminating or limiting the personal liability of a director to the corporation or its shareholders for monetary damages for breach of fiduciary duty as a director~~,~~; provided that ~~such~~ no provision shall ~~not~~ eliminate or limit the liability of a director:

a. for any breach of the director's duty of loyalty to the corporation or its shareholders; ~~or~~

b. for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law; ~~or~~

c. under Section 1053 of this title; ~~or~~

d. for any transaction from which the director derived an improper personal benefit~~.~~; or

~~No such provision shall eliminate or limit the liability of a director~~

e. for any act or omission occurring prior to the date ~~when such~~ the provision becomes effective.

C. It shall not be necessary to set forth in the certificate of incorporation any of the powers conferred on corporations by the provisions of the Oklahoma General Corporation Act.

SECTION 35. AMENDATORY 18 O.S. 1991, Section 1008, is amended to read as follows:

Section 1008.

CERTIFICATE OF INCORPORATION; DEFINITION

The term "certificate of incorporation", as used in the Oklahoma General Corporation Act, unless the context requires otherwise, includes not only the original certificate of incorporation filed to create a corporation but also all other certificates, agreements of merger or consolidation, plans of reorganization, or other instruments, ~~howsoever~~ however designated, which are filed pursuant to the provisions of Sections ~~6, 23 through 26, 32, 76 through 80, 81 through 87,~~ 1006, 1023 through 1026, 1032, 1076 through 1080, 1081 through 1087, 1090.1 or 1090.2 of this title, Section 27 of this act, or ~~118~~ Section 1118 of this ~~act~~ title, or any other section of ~~Title 18 of the Oklahoma Statutes~~ this title, and which have the effect of amending or supplementing in some respect a corporation's original certificate of incorporation.

SECTION 36. AMENDATORY 18 O.S. 1991, Section 1026, is amended to read as follows:

Section 1026.

RESIGNATION OF REGISTERED AGENT NOT COUPLED WITH APPOINTMENT OF SUCCESSOR; ABSENCE OF REGISTERED AGENT

A. The registered agent of one or more corporations may resign without appointing a successor by filing, in the name of each affected corporation, a certificate with the Secretary of State; but ~~such~~ a resignation shall not become effective until ~~sixty (60)~~ thirty (30) days after ~~each~~ a certificate is filed. There shall be ~~included in~~ attached to the certificate ~~a statement~~ an affidavit of ~~such~~ the registered agent, if an individual, or of ~~the president, a~~

~~vice-president, or the secretary thereof~~ an authorized officer, if a corporation~~, that~~ stating either:

1. That at least thirty (30) days prior to the date of the filing of the certificate, due notice ~~of the resignation of the registered agent~~ was sent by certified or registered mail to the corporation for which ~~such~~ the registered agent was acting, at the principal office thereof outside the state, if known to the registered agent or, if not, to the last-known address of the attorney or other individual at whose request the registered agent was appointed for ~~such~~ the corporation ~~and such address shall be specified therein~~, of the resignation of the registered agent; or

2. That the registered agent has, on not less than two separate occasions, attempted to send mail by first class mail to the corporation at its principal office outside the state, if known to the registered agent or, if not, to the last-known address of the attorney or other individual at whose request the registered agent was appointed for the corporation, and the mail has been returned by the post office as undeliverable, not forwardable, or unclaimed.

B. After receipt of the notice of the resignation of its registered agent provided for in subsection A of this section, the corporation for which ~~such~~ the registered agent was acting shall obtain and designate a new registered agent to take the place of the registered agent so resigning in the same manner as provided for in Section 1023 of this title for change of a registered agent. If ~~such corporation, being~~ a corporation of this state~~,~~ fails to obtain and designate a new registered agent prior to the expiration of the period of sixty (60) days after the filing by the registered agent of the certificate of resignation, the Secretary of State shall be deemed to be the registered agent of ~~such~~ the corporation until a new registered agent is designated. The Office of the Secretary of State shall charge the fee prescribed by Section 1142 of this title for acting as the registered agent.

C. If a corporation has no registered agent or the registered agent cannot be found, then service on the corporation may be made by serving the Secretary of State ~~as its agent~~ as provided in Section 2004 of Title 12 of the Oklahoma Statutes.

SECTION 37. AMENDATORY 18 O.S. 1991, Section 1031, is amended to read as follows:

Section 1031.

INDEMNIFICATION OF OFFICERS, DIRECTORS,

EMPLOYEES AND AGENTS; INSURANCE

A. A corporation shall have the power to indemnify any person who was or is a party or is threatened ~~to be~~ with being made a party to any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative, other than an action by or in the right of the corporation, by reason of the fact that ~~he~~ the person is or was a director, officer, employee, or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise, against expenses, including attorneys' fees, judgments, fines, and amounts paid in settlement actually and reasonably incurred ~~by him~~ in connection with ~~such~~ an action, suit, or proceeding if ~~he~~ the person acted in good faith and in a manner ~~he~~ the person reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe ~~his~~ the conduct was unlawful. The termination of any action, suit, or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which ~~he~~ the person reasonably believed to be in or not opposed to the best interests of the

corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that ~~his~~ the conduct was unlawful.

B. A corporation shall have the power to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending, or completed action ~~or~~, suit, or proceeding by or in the right of the corporation to procure a judgment in its favor by reason of the fact that ~~he~~ a person is or was a director, officer, employee, or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise against expenses, including attorneys' fees, actually and reasonably incurred by ~~him~~ the person in connection with the defense or settlement of ~~such~~ an action ~~or~~, suit, or proceeding if ~~he~~ the person acted in good faith and in a manner ~~he~~ the person reasonably believed to be in or not opposed to the best interests of the corporation and except that no indemnification shall be made in respect of any claim, issue, or matter ~~as to~~ for which ~~such~~ the person shall have been adjudged to be liable to the corporation unless and only to the extent that the court in which ~~such~~ the action ~~or~~, suit, or proceeding was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, ~~such~~ the person is fairly and reasonably entitled to indemnity for ~~such~~ expenses which the court shall ~~deem~~ determine to be proper.

C. To the extent that a director, officer, employee, or agent of a corporation has been successful on the merits or otherwise in defense of any action, suit, or proceeding referred to in subsection A or B of this section, or in defense of any claim, issue, or matter therein, he or she shall be indemnified ~~against~~ for expenses, including attorneys' fees, actually and reasonably incurred ~~by him in connection therewith~~.

D. Any indemnification under the provisions of subsection A or B of this section, unless ordered by a court, shall be made by the corporation only as authorized in the specific case upon a determination that indemnification of the director, officer, employee, or agent is proper in the circumstances because ~~he has met~~ the applicable standard of conduct set forth in subsection A or B of this section has been met. ~~Such~~ A determination shall be made:

1. ~~by the board of directors by a majority vote of a quorum consisting of directors who were not parties to such action, suit or proceeding; or~~

~~2. if such a quorum is not obtainable, or, even if obtainable a quorum of disinterested directors so directs~~ By a majority vote of the directors who are not parties to the action, suit, or proceeding, even though less than a quorum; or

2. If there are no directors, or if the directors direct, by independent legal counsel in a written opinion; or

3. By the shareholders.

E. Expenses incurred by an officer or director in defending a civil or criminal action, suit, or proceeding may be paid by the corporation in advance of the final disposition of ~~such~~ the action, suit, or proceeding upon receipt of an undertaking by or on behalf of ~~such~~ the director or officer to repay such amount if it shall ultimately be determined that he or she is not entitled to be indemnified by the corporation as authorized by the provisions of this section. ~~Such~~ The expenses incurred by other employees and agents may be so paid upon ~~such~~ any terms and conditions, if any, as the board of directors deems appropriate.

F. The indemnification and advancement of expenses provided by or granted pursuant to ~~the other subsections of~~ this section shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under any bylaw, agreement, vote of shareholders or disinterested directors,

or otherwise, both as to action in ~~his~~ an official capacity and as to action in another capacity while holding ~~such~~ the office.

G. A corporation shall have power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee, or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise against any liability asserted against ~~him~~ the person and incurred by ~~him~~ the person in any ~~such~~ capacity, or arising out of ~~his~~ the person's status ~~as such~~, whether or not the corporation would have the power to indemnify ~~him~~ the person against ~~such~~ liability under the provisions of this section.

H. For purposes of this section, references to "the corporation" shall include, in addition to the resulting corporation, any constituent corporation, including any constituent of a constituent, absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, and employees, or agents, so that any person who is or was a director, officer, employee, or agent of ~~such~~ a constituent corporation, or is or was serving at the request of ~~such~~ a constituent corporation as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise, shall stand in the same position under the provisions of this section with respect to the resulting or surviving corporation as ~~he~~ the person would have with respect to ~~such~~ the constituent corporation if its separate existence had continued.

I. For purposes of this section, references to "other enterprises" shall include employee benefit plans; references to "fines" shall include any excise taxes assessed on a person with respect to an employee benefit plan; and references to "serving at the request of the corporation" shall include any service as a

director, officer, employee, or agent of the corporation which imposes duties on, or involves services, by ~~such~~ a director, officer, employee, or agent with respect to an employee benefit plan, its participants, or beneficiaries; and a person who acted in good faith and in a manner ~~he~~ the person reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner "not opposed to the best interests of the corporation" as referred to in this section.

J. The indemnification and advancement of expenses provided by or granted pursuant to this section, unless otherwise provided when authorized or ratified, shall continue as to a person who has ceased to be a director, officer, employee, or agent and shall inure to the benefit of the heirs, executors, and administrators of ~~such a~~ the person.

K. The district court is hereby vested with exclusive jurisdiction to hear and determine all actions for advancement of expenses or indemnification brought under this section or under any bylaw, agreement, vote of shareholders or disinterested directors, or otherwise. The court may summarily determine a corporation's obligation to advance expenses including, but not limited to, attorneys' fees.

SECTION 38. AMENDATORY 18 O.S. 1991, Section 1032, is amended to read as follows:

Section 1032.

CLASSES AND SERIES OF STOCK; RIGHTS, ETC.

A. Every corporation may issue one or more classes of stock or one or more series of stock within any class thereof, any or all of which classes may be of stock with par value or stock without par value and which classes or series may have ~~such~~ voting powers, full or limited, or no voting powers, and ~~such~~ designations, preferences, and relative, participating, optional, or other special rights, ~~and~~

qualifications, limitations, or restrictions thereof, as shall be stated and expressed in the certificate of incorporation or of any amendment thereto, or in the resolution or resolutions providing for the ~~issue~~ issuance of ~~such~~ stock adopted by the board of directors pursuant to authority expressly vested in it by the provisions of its certificate of incorporation. Any of the voting powers, designations, preferences, rights ~~and~~, qualifications, limitations, or restrictions of any ~~such~~ class or series of stock may be made dependent upon facts ascertainable outside the certificate of incorporation or of any amendment thereto, or outside the resolution or resolutions providing for the ~~issue~~ issuance of ~~such~~ stock adopted by the board of directors pursuant to authority expressly vested in it by the provisions of its certificate of incorporation~~,~~; provided, that the manner in which such facts shall operate upon the voting powers, designations, preferences, rights ~~and~~, qualifications, limitations, or restrictions of ~~such~~ a class or series of stock is clearly and expressly set forth in the certificate of incorporation or in the resolution or resolutions providing for the issue of such stock adopted by the board of directors. The power to increase or decrease or otherwise adjust the capital stock as provided for in the Oklahoma General Corporation Act, Section 1001 et seq. of this title, shall apply to all or any such classes of stock. The term "facts", as used in this subsection, includes, but is not limited to, the occurrence of any event, including a determination or action by any person or body, including the corporation.

B. Any stock which is entitled upon any distribution of the corporation's assets, whether by dividend or by liquidation, to a preference over another class or series of stock may be made subject to redemption by the corporation at its option or at the option of the holders of such stock or upon the happening of a specified event. Any stock of a regulated investment company registered under

the Investment Company Act of 1940, as heretofore or hereafter amended, 15 U.S.C.A., Section 80a-1, et seq., may be given the right to require the corporation to redeem or repurchase the stock at the option of the holder of the stock, provided such redemption or repurchase would not impair or cause a further impairment of the capital of the corporation. Any stock of a corporation which has a license or franchise from a governmental agency to conduct its business or is a member of a national securities exchange, which license, franchise or membership is conditioned upon some or all of the holders of its stock possessing prescribed qualifications, may be made subject to redemption by the corporation to the extent necessary to prevent the loss of such license, franchise or membership or to reinstate it. Any stock which may be made redeemable under this section may be redeemed for cash, property or rights, including securities of the same or another corporation, at such time or times, price or prices, or rate or rates, and with such adjustments, as shall be stated in the certificate of incorporation or in the resolution or resolutions providing for the issue of such stock adopted by the board of directors as provided for in subsection A of this section.

C. The holders of preferred or special stock of any class or of any series thereof shall be entitled to receive dividends at such rates, on such conditions and at such times as shall be stated in the certificate of incorporation or in the resolution or resolutions providing for the issue of such stock adopted by the board of directors as provided for in subsection A of this section, payable in preference to, or in such relation to, the dividends payable on any other class or classes or of any other series of stock, and cumulative or noncumulative as shall be so stated and expressed. When dividends upon the preferred and special stocks, if any, to the extent of the preference to which such stocks are entitled, shall have been paid or declared and set apart for payment, a dividend on

the remaining class or classes or series of stock may then be paid out of the remaining assets of the corporation available for dividends as otherwise provided for in the Oklahoma General Corporation Act.

D. The holders of the preferred or special stock of any class or of any series thereof shall be entitled to such rights upon the dissolution of, or upon any distribution of the assets of, the corporation as shall be stated in the certificate of incorporation or in the resolution or resolutions providing for the issue of such stock adopted by the board of directors as provided for in subsection A of this section.

E. Any stock of any class or of any series thereof may be made convertible into, or exchangeable for, at the option of either the holder or the corporation or upon the happening of a specified event, shares of any other class or classes or any other series of the same or any other class or classes of stock of the corporation, at such price or prices or at such rate or rates of exchange and with such adjustments as shall be stated in the certificate of incorporation or in the resolution or resolutions providing for the issue of such stock adopted by the board of directors as provided for in subsection A of this section.

F. If any corporation shall be authorized to issue more than one class of stock or more than one series of any class, the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights shall be set forth in full or summarized on the face or back of the certificate which the corporation shall issue to represent such class or series of stock, provided that, except as otherwise provided for in Section 1055 of this title, in lieu of the foregoing requirements, there may be set forth on the face or back of the certificate which the corporation shall issue to represent

such class or series of stock, a statement that the corporation will furnish without charge to each shareholder who so requests the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights. Within a reasonable time after the issuance or transfer of uncertificated stock and in addition to statements required to be furnished pursuant to Section 8-408 of Title 12A of the Oklahoma Statutes, the corporation shall send to the registered owner thereof a written notice containing the information required to be set forth or stated on certificates pursuant to this section or Section 1037, subsection A of Section 1055 or subsection A of Section 1063 of this title, or with respect to this section a statement that the corporation will furnish without charge to each shareholder who so requests the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights. Except as otherwise expressly provided by law, the rights and obligations of the holders of uncertificated stock and the rights and obligations of the holder of certificates representing stock of the same class and series shall be identical.

G. 1. When any corporation desires to issue any shares of stock of any class or of any series of any class of which the powers, designations, preferences and relative, participating, optional or other rights, if any, or the qualifications, limitations or restrictions thereof, if any, shall not have been set forth in the certificate of incorporation or in any amendment thereto but shall be provided for in a resolution or resolutions adopted by the board of directors pursuant to authority expressly vested in it by the provisions of the certificate of incorporation or any amendment thereto, a certificate of designations setting forth a copy of such

resolution or resolutions and the number of shares of stock of such class or series as to which the resolution or resolutions apply shall be executed, acknowledged and filed, and shall become effective, in accordance with the provisions of Section 1007 of this title. Unless otherwise provided in any such resolution or resolutions, the number of shares of stock of any such series to which such resolution or resolutions apply may be increased, but not above the total number of authorized shares of the class, or decreased, but not below the number of shares thereof then outstanding, by a certificate likewise executed, acknowledged and filed setting forth a statement that a specified increase or decrease therein had been authorized and directed by a resolution or resolutions likewise adopted by the board of directors. In case the number of such shares shall be decreased, the number of shares so specified in the certificate shall resume the status which they had prior to the adoption of the first resolution or resolutions. Unless otherwise provided in the certificate of incorporation, if no shares of stock have been issued of a class or series of stock established by a resolution of the board of directors, the voting powers, designations, preferences and relative, participating, optional or other rights, if any, or the qualifications, limitations or restrictions thereof, may be amended by a resolution or resolutions adopted by the board of directors. A certificate which states that no shares of the class or series have been issued, sets forth a copy of the resolution or resolutions, and, if the designation of the class or series is being changed, indicates the original designation and the new designation, shall be executed, acknowledged and filed, and shall become effective, in accordance with the provisions of Section 1007 of this title. When no shares of any such class or series are outstanding, either because none were issued or because no issued shares of any such class or series remain outstanding, a certificate setting forth a resolution or

resolutions adopted by the board of directors that none of the authorized shares of such class or series are outstanding, and that none will be issued subject to the certificate of designations previously filed with respect to such class or series, may be executed, acknowledged and filed in accordance with the provisions of Section 1007 of this title and, when such certificate becomes effective, it shall have the effect of eliminating from the certificate of incorporation all matters set forth in the certificate of designations with respect to such class or series of stock.

2. When any certificate filed pursuant to the provisions of this subsection becomes effective, it shall have the effect of amending the certificate of incorporation; except that neither the filing of such certificate nor the filing of a restated certificate of incorporation pursuant to Section 1080 of this title shall prohibit the board of directors from subsequently adopting such resolutions as authorized by this subsection.

SECTION 39. AMENDATORY 18 O.S. 1991, Section 1049, is amended to read as follows:

Section 1049.

DIVIDENDS; PAYMENT; WASTING ASSET CORPORATIONS

A. The directors of every corporation, subject to any restrictions contained in its certificate of incorporation, may declare and pay dividends upon the shares of its capital stock either out of its surplus, as defined in and computed in accordance with the provisions of Sections ~~35~~ 1035 and ~~79~~ 1079 of this ~~act~~ title, or in case there shall be no such surplus, out of its net profits for the fiscal year in which the dividend is declared and/or the preceding fiscal year. If the capital of the corporation, computed in accordance with the provisions of Sections ~~35~~ 1035 and ~~79~~ 1079 of this ~~act~~ title, shall have been diminished by depreciation in the value of its property, or by losses, or

otherwise, to an amount less than the aggregate amount of the capital represented by the issued and outstanding stock of all classes having a preference upon the distribution of assets, the directors of such corporation shall not declare and pay out of such net profits any dividends upon any shares of any classes of its capital stock until the deficiency in the amount of capital represented by the issued and outstanding stock of all classes having a preference upon the distribution of assets shall have been repaired. Nothing in this subsection shall invalidate or otherwise affect a note, debenture, or other obligation of the corporation paid by it as a dividend on shares of its stock, or any payment made thereon, if at the time the note, debenture, or obligation was delivered by the corporation, the corporation had either surplus or net profits as provided in this subsection from which the dividend could lawfully have been paid.

B. Subject to any restrictions contained in its certificate of incorporation, the directors of any corporation engaged in the exploitation of wasting assets (including but not limited to a corporation engaged in the exploitation of natural resources or other wasting assets, including patents, or engaged primarily in the liquidation of specific assets) may determine the net profits derived from the exploitation of such wasting assets or the net proceeds derived from such liquidation without taking into consideration the depletion of such assets resulting from lapse of time, consumption, liquidation or exploitation of such assets.

SECTION 40. AMENDATORY 18 O.S. 1991, Section 1077, is amended to read as follows:

Section 1077.

AMENDMENT OF CERTIFICATE OF INCORPORATION AFTER RECEIPT OF PAYMENT FOR STOCK; NONSTOCK CORPORATIONS

A. 1. After a corporation has received payment for any of its capital stock, it may amend its certificate of incorporation, from

time to time, in any and as many respects as may be desired, so long as its certificate of incorporation as amended would contain only such provisions as it would be lawful and proper to insert in an original certificate of incorporation filed at the time of the filing of the amendment; and if a change in stock or the rights of shareholders, or an exchange, reclassification or cancellation of stock or rights of shareholders is to be made, such provisions as may be necessary to effect such change, exchange, reclassification or cancellation. In particular, and without limitation upon such general power of amendment, a corporation may amend its certificate of incorporation, from time to time, so as:

a. to change its corporate name; or

b. to change, substitute, enlarge or diminish the nature of its business or its corporate powers and purposes; or

c. to increase or decrease its authorized capital stock or to reclassify the same, by changing the number, par value, designations, preferences, or relative, participating, optional, or other special rights of the shares, or the qualifications, limitations or restrictions of such rights, or by changing shares with par value into shares without par value, or shares without par value into shares with par value either with or without increasing or decreasing the number of shares; or

d. to cancel or otherwise affect the right of the holders of the shares of any class to receive dividends which have accrued but have not been declared; or

e. to create new classes of stock having rights and preferences either prior and superior or subordinate and inferior to the stock of any class then authorized, whether issued or unissued; or

f. to change the period of its duration.

2. Any or all changes or alterations provided for in paragraph 1 of this subsection may be effected by one certificate of amendment.

B. Every amendment authorized by the provisions of subsection A of this section shall be made and effected in the following manner:

1. If the corporation has capital stock, its board of directors shall adopt a resolution setting forth the amendment proposed, declaring its advisability, and either calling a special meeting of the shareholders entitled to vote in respect thereof for the consideration of such amendment or directing that the amendment proposed be considered at the next annual meeting of shareholders. Such special or annual meeting shall be called and held upon notice in accordance with the provisions of Section ~~67~~ 1067 of this ~~act~~ title. The notice shall set forth such amendment in full or a brief summary of the changes to be effected thereby, as the directors shall deem advisable. At the meeting a vote of the shareholders entitled to vote thereon shall be taken for and against the proposed amendment. If a majority of the outstanding stock entitled to vote thereon, and a majority of the outstanding stock of each class entitled to vote thereon as a class, has been voted in favor of the amendment, a certificate setting forth the amendment and certifying that such amendment has been duly adopted in accordance with the provisions of this section shall be executed, acknowledged and filed and shall become effective in accordance with the provisions of Section ~~7~~ 1007 of this ~~act~~ title.

2. The holders of the outstanding shares of a class shall be entitled to vote as a class upon a proposed amendment, whether or not entitled to vote thereon by the provisions of the certificate of incorporation, if the amendment would increase or decrease the aggregate number of authorized shares of such class, increase or decrease the par value of the shares of such class, or alter or

change the powers, preferences or special rights of the shares of such class so as to affect them adversely. If any proposed amendment would alter or change the powers, preferences, or special rights of one or more series of any class so as to affect them adversely, but shall not so affect the entire class, then only the shares of the series so affected by the amendment shall be considered a separate class for the purposes of this paragraph. The number of authorized shares of any such class or classes of stock may be increased or decreased, but not below the number of shares thereof then outstanding, by the affirmative vote of the holders of a majority of the stock of the corporation entitled to vote irrespective of the provisions of this paragraph, if so provided in the original certificate of incorporation, in any amendment thereto which created such class or classes of stock or which was adopted prior to the issuance of any shares of such class or classes of stock, or in any amendment thereto which was authorized by a resolution or resolutions adopted by the affirmative vote of the holders of a majority of such class or classes of stock.

3. If the corporation has no capital stock, then the governing body thereof shall adopt a resolution setting forth the amendment proposed and declaring its advisability. If at a subsequent meeting, held, ~~on~~ upon notice stating the purpose thereof, ~~not earlier than fifteen (15) days and not later than sixty (60) days from the meeting at which such resolution has been passed~~ and given in accordance with the provisions of Section 1067 of this title, a majority of all the members of the governing body, shall vote in favor of such amendment, a certificate thereof shall be executed, acknowledged and filed and shall become effective in accordance with the provisions of Section ~~7~~ 1007 of this ~~act~~ title. The certificate of incorporation of any such corporation without capital stock may contain a provision requiring an amendment thereto to be approved by a specified number or percentage of the members or of any specified

class of members of such corporation in which event only one meeting of the governing body thereof shall be necessary, and such proposed amendment shall be submitted to the members or to any specified class of members of such corporation without capital stock in the same manner, so far as applicable, as is provided for in this section for an amendment to the certificate of incorporation of a stock corporation; and in the event of the adoption thereof, a certificate evidencing such amendment shall be executed, acknowledged and filed and shall become effective in accordance with the provisions of Section ~~7~~ 1007 of this ~~act~~ title. In the event the amendment to the certificate of incorporation of a nonstock corporation results in the change of the name of such corporation, a notice of the name change shall be published one (1) time in a newspaper having general circulation in the county in which the principal place of business of such corporation is located. Proof of such publication shall be filed in the Office of the Secretary of State.

4. Whenever the certificate of incorporation shall require for action by the board of directors, by the holders of any class or series of shares or by the holders of any other securities having voting power the vote of a greater number or proportion than is required by the provisions of the Oklahoma General Corporation Act, Section 1001 et seq. of this title, the provision of the certificate of incorporation requiring such greater vote shall not be altered, amended or repealed except by such greater vote.

SECTION 41. AMENDATORY 18 O.S. 1991, Section 1081, is amended to read as follows:

Section 1081.

MERGER OR CONSOLIDATION OF DOMESTIC CORPORATIONS

A. Any two or more corporations existing under the laws of this state may merge into a single corporation, which may be any one of the constituent corporations or may consolidate into a new

corporation formed by the consolidation, pursuant to an agreement of merger or consolidation, as the case may be, complying and approved in accordance with the provisions of this section.

B. The board of directors of each corporation which desires to merge or consolidate shall adopt a resolution approving an agreement of merger or consolidation. The agreement shall state:

1. The terms and conditions of the merger or consolidation;

2. The mode of carrying the same into effect;

3. In the case of a merger, such amendments or changes in the certificate of incorporation of the surviving corporation as are desired to be effected by the merger, or, if no such amendments or changes are desired, a statement that the certificate of incorporation of the surviving corporation shall be its certificate of incorporation of the surviving or resulting corporation;

4. In the case of a consolidation, that the certificate of incorporation of the resulting corporation shall be as is set forth in an attachment to the agreement;

5. The manner of converting the shares of each of the constituent corporations into shares or other securities of the corporation surviving or resulting from the merger or consolidation, and, if any shares of any of the constituent corporations are not to be converted solely into shares or other securities of the surviving or resulting corporation, the cash, property, rights or securities of any other corporation <u>or entity</u> which the holders of such shares are to receive in exchange for or upon conversion of such shares and the surrender of any certificates evidencing them, which cash, property, rights or securities of any other corporation <u>or entity</u> may be in addition to or in lieu of shares or other securities of the surviving or resulting corporation; and

6. Such other details or provisions as are deemed desirable, including without limiting the generality of the foregoing, a provision for the payment of cash in lieu of the issuance or

recognition of fractional shares, interests or rights, or for any other arrangement with respect thereto, consistent with the provisions of Section 1036 of this title. The agreement so adopted shall be executed and acknowledged in accordance with the provisions of Section 1007 of this title. Any of the terms of the agreement of merger or consolidation may be made dependent upon facts ascertainable outside of such agreement, provided that the manner in which such facts shall operate upon the terms of the agreement is clearly and expressly set forth in the agreement of merger or consolidation.

C. The agreement required by the provisions of subsection B of this section shall be submitted to the shareholders of each constituent corporation at an annual or special meeting thereof for the purpose of acting on the agreement. Due notice of the time, place and purpose of the meeting shall be mailed to each holder of stock whether voting or nonvoting, of the corporation at his address as it appears on the records of the corporation, at least twenty (20) days prior to the date of the meeting. The notice shall contain a copy of the agreement or a brief summary thereof, as the directors shall deem advisable; provided, however, such notice shall be effective only with respect to mergers or consolidations for which the notice of the shareholders meeting to vote thereon has been mailed after November 1, 1988. At the meeting the agreement shall be considered and a vote taken for its adoption or rejection. If a majority of the outstanding stock of the corporation entitled to vote thereon shall be voted for the adoption of the agreement, that fact shall be certified on the agreement by the secretary or the assistant secretary of the corporation. If the agreement shall be so adopted and certified by each constituent corporation, it shall then be filed and shall become effective in accordance with the provisions of Section 1007 of this title. In lieu of filing an agreement of merger or consolidation required by this section, the

surviving or resulting corporation may file a certificate of merger or consolidation executed in accordance with the provisions of Section 1007 of this title and which states:

1. The name and state of incorporation of each of the constituent corporations;

2. That an agreement of merger or consolidation has been approved, adopted, certified, executed and acknowledged by each of the constituent corporations in accordance with the provisions of this section;

3. The name of the surviving or resulting corporation;

4. In the case of a merger, such amendments or changes in the certificate of incorporation of the surviving corporation as are desired to be effected by the merger, or, if no such amendments or changes are desired, a statement that the certificate of incorporation of the surviving corporation shall be its certificate of incorporation;

5. In the case of a consolidation, that the certificate of incorporation of the resulting corporation shall be as is set forth in an attachment to the certificate;

6. That the executed agreement of consolidation or merger is on file at the principal place of business of the surviving corporation, stating the address thereof; and

7. That a copy of the agreement of consolidation or merger will be furnished by the surviving corporation, on request and without cost, to any shareholder of any constituent corporation. For purposes of Sections 1084 and 1086 of this title, the term "shareholder" shall be deemed to include "member".

D. 1. Any agreement of merger or consolidation may contain a provision that at any time prior to the filing of the agreement with the Secretary of State, the agreement may be terminated by the board of directors of any constituent corporation notwithstanding approval of the agreement by the shareholders of all or any of the

constituent corporations. Any agreement of merger or consolidation may contain a provision that the boards of directors of the constituent corporations may amend the agreement at any time prior to the filing of the agreement, or a certificate in lieu thereof, with the Secretary of State, provided that an amendment made subsequent to the adoption of the agreement by the shareholders of any constituent corporation shall not:

a. alter or change the amount or kind of shares, securities, cash, property and/or rights to be received in exchange for or on conversion of all or any of the shares of any class or series thereof of such constituent corporation;

b. alter or change any term of the certificate of incorporation of the surviving corporation to be effected by the merger or consolidation; or

c. alter or change any of the terms and conditions of the agreement if such alteration or change would adversely affect the holders of any class or series thereof of such constituent corporation.

2. For purposes of Section 1083 of this title, the references to "agreement of merger" in this subsection shall mean the resolution of merger adopted by the board of directors of the parent corporation.

E. In the case of a merger, the certificate of incorporation of the surviving corporation shall automatically be amended to the extent, if any, that changes in the certificate of incorporation are set forth in the certificate of merger.

F. Notwithstanding the requirements of subsection C of this section, unless required by its certificate of incorporation, no vote of shareholders of a constituent corporation surviving a merger shall be necessary to authorize a merger if:

1. The agreement of merger does not amend in any respect the certificate of incorporation of such constituent corporation;

2. Each share of stock of such constituent corporation outstanding immediately prior to the effective date of the merger is to be an identical outstanding or treasury share of the surviving corporation after the effective date of the merger; and

3. Either no shares of common stock of the surviving corporation and no shares, securities or obligations convertible into such stock are to be issued or delivered under the plan of merger, or the authorized unissued shares or the treasury shares of common stock of the surviving corporation to be issued or delivered under the plan of merger plus those initially issuable upon conversion of any other shares, securities or obligations to be issued or delivered under such plan do not exceed twenty percent (20%) of the shares of common stock of such constituent corporation outstanding immediately prior to the effective date of the merger. No vote of shareholders of a constituent corporation shall be necessary to authorize a merger or consolidation if no shares of the stock of such corporation shall have been issued prior to the adoption by the board of directors of the resolution approving the agreement of merger or consolidation. If an agreement of merger is adopted by the constituent corporation surviving the merger, by action of its board of directors and without any vote of its shareholders pursuant to the provisions of this subsection, the secretary or assistant secretary of that corporation shall certify on the agreement that the agreement has been adopted pursuant to the provisions of this subsection and that, as of the date of such certificate, the outstanding shares of the corporation were such as to render the provisions of this subsection applicable. The agreement so adopted and certified shall then be filed and shall become effective in accordance with the provisions of Section 1007 of this title. Such filing shall constitute a representation by the

person who executes the certificate that the facts stated in the certificate remain true immediately prior to such filing.

SECTION 42. AMENDATORY 18 O.S. 1991, Section 1082, is amended to read as follows:

Section 1082.

MERGER OR CONSOLIDATION OF DOMESTIC AND FOREIGN CORPORATIONS; SERVICE OF PROCESS UPON SURVIVING OR RESULTING CORPORATION

A. Any one or more corporations of this state may merge or consolidate with one or more other corporations of any other state or states of the United States, or of the District of Columbia if the laws of such other state or states or of the District permit a corporation of such jurisdiction to merge or consolidate with a corporation of another jurisdiction. The constituent corporations may merge into a single corporation, which may be any one of the constituent corporations, or they may consolidate into a new corporation formed by the consolidation, which may be a corporation of the state of incorporation of any one of the constituent corporations, pursuant to an agreement of merger or consolidation, as the case may be, complying and approved in accordance with the provisions of this section. In addition, any one or more corporations ~~organized~~ existing under the laws of ~~any jurisdiction other than one of the United States~~ this state may merge or consolidate with one or more corporations ~~existing~~ organized under the laws of ~~this state if the surviving or resulting corporation will be a corporation of this state, and~~ any jurisdiction other than one of the United States if the laws under which the other corporation or corporations are ~~formed~~ organized permit a corporation of ~~such~~ that jurisdiction to merge or consolidate with a corporation of ~~another jurisdiction~~ this state.

B. All the constituent corporations shall enter into an agreement of merger or consolidation. The agreement shall state:

1. The terms and conditions of the merger or consolidation;

2. The mode of carrying the same into effect;

3. The manner of converting the shares of each of the constituent corporations into shares or other securities of the corporation surviving or resulting from the merger or consolidation and, if any shares of any of the constituent corporations are not to be converted solely into shares or other securities of the surviving or resulting corporation, the cash, property, rights, or securities of any other corporation or entity which the ~~holder~~ holders of such shares are to receive in exchange for, or upon conversion of, such shares and the surrender of any certificates evidencing them, which cash, property, rights, or securities of any other corporation or entity may be in addition to or in lieu of the shares or other securities of the surviving or resulting corporation;

4. Such other details or provisions as are deemed desirable, including, without limiting the generality of the foregoing, a provision for the payment of cash in lieu of the issuance or recognition of fractional shares of the surviving or resulting corporation or of any other corporation the securities of which are to be received in the merger or consolidation, or for some other arrangement with respect thereto consistent with the provisions of Section 1036 of this title; and

5. Such other provisions or facts as shall be required to be set forth in the certificate of incorporation by the laws of the state which are stated in the agreement to be the laws that shall govern the surviving or resulting corporation and that can be stated in the case of a merger or consolidation. Any of the terms of the agreement of merger or consolidation may be made dependent upon facts ascertainable outside of such agreement, provided that the manner in which such facts shall operate upon the terms of the agreement is clearly and expressly set forth in the agreement of merger or consolidation.

C. The agreement shall be adopted, approved, executed and acknowledged by each of the constituent corporations in accordance with the laws under which it is formed, and, in the case of an Oklahoma corporation, in the same manner as is provided for in Section 1081 of this title. The agreement shall be filed and shall become effective for all purposes of the laws of this state when and as provided for in Section 1081 of this title with respect to the merger or consolidation of corporations of this state. In lieu of filing the agreement of merger or consolidation, the surviving or resulting corporation may file a certificate of merger or consolidation executed in accordance with the provisions of Section 1007 of this title, which states:

1. The name and state or jurisdiction of incorporation of each of the constituent corporations;

2. That an agreement of merger or consolidation has been approved, adopted, executed and acknowledged by each of the constituent corporations in accordance with the provisions of this subsection;

3. The name of the surviving or resulting corporation;

4. In the case of a merger, such amendments or changes in the certificate of incorporation of the surviving corporation as are desired to be effected by the merger, or, if no such amendments or changes are desired, a statement that the certificate of incorporation of the surviving corporation shall be its certificate of incorporation;

5. In the case of a consolidation, that the certificate of incorporation of the resulting corporation shall be as is set forth in an attachment to the certificate;

6. That the executed agreement of consolidation or merger is on file at the principal place of business of the surviving corporation and the address thereof;

7. That a copy of the agreement of consolidation or merger will be furnished by the surviving corporation, on request and without cost, to any shareholder of any constituent corporation;

8. If the corporation surviving or resulting from the merger or consolidation is to be a corporation of this state, the authorized capital stock of each constituent corporation which is not a corporation of this state; and

9. The agreement, if any, required by the provisions of subsection D of this section. For purposes of Section 1085 of this title, the term "shareholder" in subsection D of this section shall be deemed to include "member".

D. If the corporation surviving or resulting from the merger or consolidation is to be governed by the laws of the District of Columbia or any state <u>or jurisdiction</u> other than this state, it shall agree that it may be served with process in this state in any proceeding for enforcement of any obligation of any constituent corporation of this state, as well as for enforcement of any obligation of the surviving or resulting corporation arising from the merger or consolidation, including any suit or other proceeding to enforce the right of any shareholders as determined in appraisal proceedings pursuant to the provisions of Section 1091 of this title, and shall irrevocably appoint the Secretary of State as its agent to accept service of process in any such suit or other proceedings and shall specify the address to which a copy of such process shall be mailed by the Secretary of State. In the event of such service upon the Secretary of State in accordance with the provisions of this subsection, the Secretary of State shall immediately notify such surviving or resulting corporation thereof by letter, certified mail, return receipt requested, directed to such surviving or resulting corporation at its address so specified unless such surviving or resulting corporation shall have designated in writing to the Secretary of State a different address for such

purpose, in which case it shall be mailed to the last address so designated. Such letter shall enclose a copy of the process and any other papers served on the Secretary of State pursuant to the provisions of this subsection. It shall be the duty of the plaintiff in the event of such service to serve process and any other papers in duplicate, to notify the Secretary of State that service is being effected pursuant to the provisions of this subsection and to pay the Secretary of State the fee provided for in paragraph 7 of Section 1142 of this title, which fee shall be taxed as part of the costs in the proceeding, if the plaintiff shall prevail therein. The Secretary of State shall maintain an alphabetical record of any such service setting forth the name of the plaintiff and the defendant, the title, docket number and nature of the proceeding in which process has been served upon the Secretary of State, the fact that service has been effected pursuant to the provisions of this subsection, the return date thereof, and the date service was made. The Secretary of State shall not be required to retain such information longer than five (5) years from receipt of the service of process by the Secretary of State.

E. The provisions of subsection D of Section 1081 of this title shall apply to any merger or consolidation pursuant to the provisions of this section. The provisions of subsection E of Section 1081 of this title shall apply to a merger pursuant to the provisions of this section in which the surviving corporation is a corporation of this state. The provisions of subsection F of Section 1081 of this title shall apply to any merger pursuant to the provisions of this section.

SECTION 43. AMENDATORY 18 O.S. 1991, Section 1083, is amended to read as follows:

Section 1083.

MERGER OF PARENT CORPORATION AND SUBSIDIARY OR SUBSIDIARIES

A. In any case in which at least ninety percent (90%) of the outstanding shares of each class of the stock of a corporation or corporations is owned by another corporation and one of such corporations is a corporation of this state and the other or others are corporations of this state or of any other state or states or of the District of Columbia and the laws of such other state or states or of the District of Columbia permit a corporation of such jurisdiction to merge with a corporation of another jurisdiction, the corporation having such stock ownership may either merge such other corporation or corporations into itself and assume all of its or their obligations, or merge itself, or itself and one or more of such other corporations, into one of such other corporations by executing, acknowledging and filing, in accordance with the provisions of Section 1007 of this title, a certificate of such ownership and merger setting forth a copy of the resolution of its board of directors to so merge and the date of the adoption thereof; provided, however, that in case the parent corporation shall not own all the outstanding stock of all the subsidiary corporations, parties to a merger as aforesaid, the resolution of the board of directors of the parent corporation shall state the terms and conditions of the merger, including the securities, cash, property, or rights to be issued, paid, delivered or granted by the surviving corporation upon surrender of each share of the subsidiary corporation or corporations not owned by the parent corporation. If the parent corporation is not the surviving corporation, the resolution shall include provision for the pro rata issuance of stock of the surviving corporation to the holders of the stock of the parent corporation on surrender of any certificates therefor, and the certificate of ownership and merger shall state that the proposed merger has been approved by a majority of the outstanding stock of the parent corporation entitled to vote thereon at a meeting thereof duly called and held after twenty (20) days' notice

of the purpose of the meeting mailed to each such shareholder at his address as it appears on the records of the corporation if the parent corporation is a corporation of this state or state that the proposed merger has been adopted, approved, certified, executed and acknowledged by the parent corporation in accordance with the laws under which it is organized if the parent corporation is not a corporation of this state. If the surviving corporation exists under the laws of the District of Columbia or any state or jurisdiction other than this state, the provisions of subsection D of Section 1082 of this title shall also apply to a merger pursuant to the provisions of this section.

B. Subject to the provisions of paragraph 1 of subsection A of Section 1006 of this title, if the surviving corporation is an Oklahoma corporation, it may change its corporate name by the inclusion of a provision to that effect in the resolution of merger adopted by the directors of the parent corporation and set forth in the certificate of ownership and merger, and upon the effective date of the merger, the name of the corporation shall be so changed.

C. The provisions of subsection D of Section 1081 of this title shall apply to a merger pursuant to the provisions of this section, and the provisions of subsection E of Section 1081 of this title shall apply to a merger pursuant to the provisions of this section in which the surviving corporation is the subsidiary corporation and is a corporation of this state. Any merger which effects any changes other than those authorized by the provisions of this section or made applicable by this subsection shall be accomplished in accordance with the provisions of Section 1081 or 1082 of this title. The provisions of Section 1091 of this title shall not apply to any merger effected pursuant to the provisions of this section, except as provided for in subsection D of this section.

D. In the event all of the stock of a subsidiary Oklahoma corporation party to a merger effected pursuant to the provisions of

this section is not owned by the parent corporation immediately prior to the merger, the shareholders of the subsidiary Oklahoma corporation party to the merger shall have appraisal rights as set forth in Section 1091 of this title.

E. A merger may be effected pursuant to the provisions of this section although one or more of the corporations parties to the merger is a corporation organized under the laws of a jurisdiction other than one of the United States; provided that the laws of such jurisdiction permit a corporation of such jurisdiction to merge with a corporation of another jurisdiction~~; and provided further that the surviving or resulting corporation shall be a corporation of this state~~.

SECTION 44. AMENDATORY 18 O.S. 1991, Section 1084, is amended to read as follows:

Section 1084.

MERGER OR CONSOLIDATION OF DOMESTIC NONSTOCK,

NOT FOR PROFIT CORPORATIONS

A. Any two or more nonstock corporations of this state, whether or not organized for profit, may merge into a single corporation, which may be any one of the constituent corporations, or they may consolidate into a new nonstock corporation, whether or not organized for profit, formed by the consolidation, pursuant to an agreement of merger or consolidation, as the case may be, complying and approved in accordance with the provisions of this section.

B. 1. The governing body of each corporation which desires to merge or consolidate shall adopt a resolution approving an agreement of merger or consolidation. The agreement shall state:

a. the terms and conditions of the merger or consolidation;

b. the mode of carrying the same into effect;

c. such other provisions or facts required or permitted by the Oklahoma General Corporation Act, Section 1001

et seq. of this title, to be stated in a certificate of incorporation for nonstock corporations as can be stated in the case of a merger or consolidation, stated in such altered form as the circumstances of the case require;

d. the manner of converting the memberships of each of the constituent corporations into memberships of the corporation surviving or resulting from the merger or consolidation; and

e. such other details or provisions as are deemed desirable.

2. Any of the terms of the agreement of merger or consolidation may be made dependent upon facts ascertainable outside of such agreement, provided that the manner in which such facts shall operate upon the terms of the agreement is clearly and expressly set forth in the agreement of merger or consolidation.

C. The agreement shall be submitted to the members of each constituent corporation who have the right to vote for the election of the members of the governing body of their corporation, at an annual or special meeting thereof for the purpose of acting on the agreement. Due notice of the time, place and purpose of the meeting shall be mailed to each member of each such corporation who has the right to vote for the election of the members of the governing body of his corporation, at his address as it appears on the records of the corporation at least twenty (20) days prior to the date of the meeting. The notice shall contain a copy of the agreement or a brief summary thereof, as the governing body shall deem advisable; provided, however such notice shall be effective only with respect to mergers or consolidations for which the notice of the members meeting to vote thereon has been mailed after November 1, 1988. At the meeting, the agreement shall be considered and a vote by ballot, in person or by proxy, taken for the adoption or rejection of the

agreement, each member who has the right to vote for the election of the members of the governing body of his corporation being entitled to one vote. If the votes of two-thirds (2/3) of the total number of members of each such corporation who have the voting power above mentioned shall be for the adoption of the agreement, then that fact shall be certified on the agreement by the officer of each such corporation performing the duties ordinarily performed by the secretary or assistant secretary of a corporation. The agreement so adopted and certified shall be executed, acknowledged and filed, and shall become effective, in accordance with the provisions of Section 1007 of this title. The provisions of paragraphs 1 through 6 of subsection C of Section 1081 of this title shall apply to a merger or consolidation under this section.

D. If, under the provisions of the certificate of incorporation of any one or more of the constituent corporations, there shall be no members who have the right to vote for the election of the members of the governing body of the corporation other than the members of that body themselves, the agreement duly entered into as provided for in subsection B of this section shall be submitted to the members of the governing body of such corporation or corporations, at a meeting thereof. Notice of the meeting shall be mailed to the members of the governing body in the same manner as is provided in the case of a meeting of the members of a corporation. If at the meeting two-thirds (2/3) of the total number of members of the governing body shall vote by ballot, in person, for the adoption of the agreement, that fact shall be certified on the agreement in the same manner as is provided in the case of the adoption of the agreement by the vote of the members of a corporation and thereafter the same procedure shall be followed to consummate the merger or consolidation.

E. The provisions of subsection E of Section 1081 of this title shall apply to a merger pursuant to the provisions of this section.

F. Nothing in this section shall be construed to authorize the merger of a charitable nonstock corporation into a nonstock corporation if such charitable nonstock corporation would thereby have its charitable status lost or impaired; but a nonstock corporation may be merged into a charitable nonstock corporation which shall continue as the surviving corporation.

SECTION 45. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1090.4 of Title 18, unless there is created a duplication in numbering, reads as follows:

MERGER OR CONSOLIDATION OF DOMESTIC CORPORATION

AND LIMITED LIABILITY COMPANY

A. Any one or more corporations of this state may merge or consolidate with one or more limited liability companies of this state or of any other state or states of the United States, or of the District of Columbia, unless the laws of the other state or states, or the District of Columbia, forbid merger or consolidation. A corporation or corporations and such one or more limited liability companies may merge with or into a corporation, which may be any one of the corporations, or they may merge with or into a limited liability company, which may be any one of the limited liability companies, or they may consolidate into a new corporation or limited liability company formed by the consolidation, which shall be a corporation or limited liability company of this state or of any other state of the United States, or the District of Columbia, which permits merger or consolidation pursuant to an agreement of merger or consolidation complying and approved in accordance with this section.

B. Merging corporations and limited liability companies shall enter into a written agreement of merger or consolidation. The agreement shall state:

1. The terms and conditions of the merger or consolidation;

2. The mode of carrying the same into effect;

3. The manner of converting the shares of stock of each corporation and the interests of each limited liability company into shares, interests, or other securities of the entity surviving or resulting from the merger or consolidation, and if any shares of any corporation or any interests of any limited liability company are not to be converted solely into shares, interests, or other securities of the entity surviving or resulting from the merger or consolidation, the cash, property, rights, or securities of any other corporation or entity which the holders of the shares or interests are to receive in exchange for, or upon conversion of, the shares or interests and the surrender of any certificates evidencing them, which cash, property, rights, or securities of any other corporation or entity may be in addition to or in lieu of shares, interests, or other securities of the entity surviving or resulting from the merger or consolidation; and

4. Other details or provisions deemed desirable, including, but not limited to, a provision for the payment of cash in lieu of the issuance of fractional shares or interests of the surviving or resulting corporation or limited liability company. Any of the terms of the agreement of merger or consolidation may be made dependent upon facts ascertainable outside of the agreement; provided, that the manner in which the facts shall operate upon the terms of the agreement is clearly and expressly set forth in the agreement of merger or consolidation.

C. The agreement required by subsection B of this section shall be adopted, approved, certified, executed, and acknowledged by each of the corporations in the same manner as is provided in Section 1081 of Title 18 of the Oklahoma Statutes and, in the case of the limited liability companies, in accordance with their limited liability company agreements and in accordance with the laws of the state under which they are formed. The agreement shall be filed and recorded and shall become effective for all purposes of the laws of

this state when and as provided in Section 1081 of Title 18 of the Oklahoma Statutes with respect to the merger or consolidation of corporations of this state. In lieu of filing and recording the agreement of merger or consolidation, the surviving or resulting corporation or limited liability company may file a certificate of merger or consolidation, executed in accordance with Section 1007 of Title 18 of the Oklahoma Statutes, if the surviving or resulting entity is a corporation, or by an authorized person, if the surviving or resulting entity is a limited liability company, which states:

1. The name and state of domicile of each of the constituent entities;

2. That an agreement of merger or consolidation has been approved, adopted, certified, executed, and acknowledged by each of the constituent entities in accordance with this subsection;

3. The name of the surviving or resulting corporation or limited liability company;

4. In the case of a merger in which a corporation is the surviving entity, amendments or changes in the certificate of incorporation of the surviving corporation as are affected by the merger, or, if no amendments or changes are affected, a statement that the certificate of incorporation of the surviving corporation shall be its certificate of incorporation;

5. In the case of a consolidation in which a corporation is the resulting entity, that the certificate of incorporation of the resulting corporation shall be as is set forth in an attachment to the certificate;

6. That the executed agreement of consolidation or merger is on file at the principal place of business of the surviving corporation or limited liability company and the address thereof;

7. That a copy of the agreement of consolidation or merger will be furnished by the surviving or resulting entity, on request and

without cost, to any shareholder of any constituent corporation or any member of any constituent limited liability company; and

8. The agreement, if any, required by subsection D of this section.

D. If the entity surviving or resulting from the merger or consolidation is to be governed by the laws of the District of Columbia or any state other than this state, it shall agree that it may be served with process in this state in any proceeding for enforcement of any obligation of any constituent corporation or limited liability company of this state, as well as for enforcement of any obligation of the surviving or resulting corporation or limited liability company arising from the merger or consolidation, including any action suit, or other proceeding to enforce the right of any shareholders as determined in appraisal proceedings pursuant to the provisions of Section 1091 of Title 18 of the Oklahoma Statutes, and shall irrevocably appoint the Secretary of State as its agent to accept service of process in any action suit, or other proceeding and shall specify the address to which a copy of the process shall be mailed by the Secretary of State. In the event of service upon the Secretary of State in accordance with this subsection, the Secretary of State shall forthwith notify the surviving or resulting corporation or limited liability company thereof by a letter, sent by certified mail with return receipt requested, directed to the surviving or resulting corporation or limited liability company at the specified address, unless the surviving or resulting corporation or limited liability company shall have designated in writing to the Secretary of State a different address for this purpose, in which case it shall be mailed to the last address designated. The Secretary of State shall enclose a copy of the process and any other papers served on the Secretary of State pursuant to this subsection. It shall be the duty of the plaintiff, in the event of service, to serve process and

any other papers in duplicate, to notify the Secretary of State that service is being effected pursuant to this subsection and to pay the Secretary of State the fee provided for in paragraph 7 of subsection A of Section 1142 of Title 18 of the Oklahoma Statutes, which fee shall be taxed as part of the costs in the proceeding, if the plaintiff shall prevail therein. The Secretary of State shall maintain an alphabetical record of service setting forth the name of the plaintiff and the defendant, the title, docket number, and nature of the proceeding in which process has been served, the fact that service has been served upon the Secretary of State, the fact that service has been effected pursuant to this subsection, the return date thereof, and the date service was made. The Secretary of State shall not be required to retain such information longer than five (5) years from the date of receipt of the service of process by the Secretary of State.

E. Subsections D, E and F of Section 1081 and Sections 1088 through 1091 and 1127 of Title 18 of the Oklahoma Statutes shall, insofar as they are applicable, apply to mergers or consolidations between corporations and limited liability companies.

SECTION 46. AMENDATORY 18 O.S. 1991, Section 1091, is amended to read as follows:

Section 1091.

APPRAISAL RIGHTS

A. Any shareholder of a corporation of this state who holds shares of stock on the date of the making of a demand pursuant to the provisions of subsection D of this section with respect to ~~such~~ the shares, who continuously holds ~~such~~ the shares through the effective date of the merger or consolidation, who has otherwise complied with the provisions of subsection D of this section, and who has neither voted in favor of the merger or consolidation nor consented thereto in writing pursuant to the provisions of Section 1073 of this title, shall be entitled to an appraisal by the

district court of the fair value of ~~his~~ the shares of stock under the circumstances described in subsections B and C of this section. As used in this section, ~~the word~~ "shareholder" means a holder of record of stock in a stock corporation and also a member of record of a nonstock corporation; ~~the words~~ "stock" and "share" mean and include what is ordinarily meant by those words and also membership or membership interest of a member of a nonstock corporation; and "depository receipt" means a receipt or other instrument issued by a depository representing an interest in one or more shares, or fractions thereof, solely of stock of a corporation, which stock is deposited with the depository. The provisions of this subsection shall be effective only with respect to mergers or consolidations consummated pursuant to an agreement of merger or consolidation entered into after November 1, 1988.

B. 1. Except as otherwise provided for in this subsection, appraisal rights shall be available for the shares of any class or series of stock of a constituent corporation in a merger or consolidation, or of the acquired corporation in a share acquisition, to be effected pursuant to the provisions of Sections 1081, 1082, 1086, 1087, or ~~1091.1~~ 1088 of this title ~~or Section 12 of this act~~.

2. a. No appraisal rights under this section shall be available for the shares of any class or series of stock or depository receipts in respect thereof which, at the record date fixed to determine the shareholders entitled to receive notice of and to vote at the meeting of shareholders to act upon the agreement of merger or consolidation, were either:

(1) listed on a national securities exchange or designated as a national market system security on an inter-dealer quotation system by the

National Association of Securities Dealers, Inc.;

or

(2) held of record by more than two thousand ~~shareholders~~ holders.

b. In addition, no appraisal rights shall be available for any shares of stock of the constituent corporation surviving a merger if the merger did not require for its approval the vote of the shareholders of the surviving corporation as provided for in subsection F of Section 1081 of this title.

3. Notwithstanding the provisions of subparagraph a of paragraph 2 of this subsection, appraisal rights provided for in this section shall be available for the shares of any class or series of stock of a constituent corporation if the holders thereof are required by the terms of an agreement of merger or consolidation pursuant to the provisions of Sections 1081, 1082, 1086 ~~or~~, 1087 or 1088 of this title to accept for ~~such~~ the stock anything except:

a. shares of stock of the corporation surviving or resulting from ~~such~~ the merger or consolidation or depository receipts in respect thereof; or

b. shares of stock of any other corporation or depository receipts in respect thereof which at the effective date of the merger or consolidation will be either:

(1) listed on a national securities exchange or designated as a national market system security on an inter-dealer quotation system by the National Association of Securities Dealers, Inc., or

(2) held of record by more than two thousand ~~shareholders~~ holders; or

c. cash in lieu of fractional shares ~~of the corporations~~ or fractional depository receipts described in subparagraphs a and b of this paragraph; or

d. any combination of the shares of stock, depository receipts, and cash in lieu of the fractional shares or fractional depository receipts described in subparagraphs a, b and c of this paragraph.

4. In the event that all of the stock of a subsidiary Oklahoma corporation which is a party to a merger effected pursuant to the provisions of Section 1083 of this title is not owned by the parent corporation immediately prior to the merger, appraisal rights shall be available for the shares of the subsidiary Oklahoma corporation.

C. Any corporation may provide in its certificate of incorporation that appraisal rights under this section shall be available for the shares of any class or series of its stock as a result of an amendment to its certificate of incorporation, any merger or consolidation in which the corporation is a constituent corporation or the sale of all or substantially all of the assets of the corporation. If the certificate of incorporation contains such a provision, the procedures of this section, including those set forth in subsections D and E of this section, shall apply as nearly as is practicable.

D. Appraisal rights shall be perfected as follows:

1. If a proposed merger or consolidation for which appraisal rights are provided under this section is to be submitted for approval at a meeting of shareholders, the corporation, not less than twenty (20) days prior to the meeting, shall notify each of its shareholders entitled to such appraisal rights that appraisal rights are available for any or all of the shares of the constituent corporations, and shall include in such notice a copy of this section. Each shareholder electing to demand the appraisal of the shares of the shareholder shall deliver to the corporation, before

the taking of the vote on the merger or consolidation, a written demand for appraisal of the shares of the shareholder. Such demand will be sufficient if it reasonably informs the corporation of the identity of the shareholder and that the shareholder intends thereby to demand the appraisal of the shares of the shareholder. A proxy or vote against the merger or consolidation shall not constitute such a demand. A shareholder electing to take such action must do so by a separate written demand as herein provided. Within ten (10) days after the effective date of such merger or consolidation, the surviving or resulting corporation shall notify each shareholder of each constituent corporation who has complied with the provisions of this subsection and has not voted in favor of or consented to the merger or consolidation as of the date that the merger or consolidation has become effective; or

2. If the merger or consolidation was approved pursuant to the provisions of Section 1073 or 1083 of this title, the surviving or resulting corporation, either before the effective date of the merger or consolidation or within ten (10) days thereafter, shall notify each of the shareholders entitled to appraisal rights of the effective date of the merger or consolidation and that appraisal rights are available for any or all of the shares of the constituent corporation, and shall include in such notice a copy of this section. The notice shall be sent by certified or registered mail, return receipt requested, addressed to the shareholder at the address of the shareholder as it appears on the records of the corporation. Any shareholder entitled to appraisal rights may, within twenty (20) days after the date of mailing of the notice, demand in writing from the surviving or resulting corporation the appraisal of the shares of the shareholder. Such demand will be sufficient if it reasonably informs the corporation of the identity of the shareholder and that the shareholder intends to demand the appraisal of the shares of the shareholder.

E. Within one hundred twenty (120) days after the effective date of the merger or consolidation, the surviving or resulting corporation or any shareholder who has complied with the provisions of subsections A and D of this section and who is otherwise entitled to appraisal rights, may file a petition in district court demanding a determination of the value of the stock of all such shareholders. Provided, however, at any time within sixty (60) days after the effective date of the merger or consolidation, any shareholder shall have the right to withdraw the demand of the shareholder for appraisal and to accept the terms offered upon the merger or consolidation. Within one hundred twenty (120) days after the effective date of the merger or consolidation, any shareholder who has complied with the requirements of subsections A and D of this section, upon written request, shall be entitled to receive from the corporation surviving the merger or resulting from the consolidation a statement setting forth the aggregate number of shares not voted in favor of the merger or consolidation and with respect to which demands for appraisal have been received and the aggregate number of holders of such shares. Such written statement shall be mailed to the shareholder within ten (10) days after the shareholder's written request for such a statement is received by the surviving or resulting corporation or within ten (10) days after expiration of the period for delivery of demands for appraisal pursuant to the provisions of subsection D of this section, whichever is later.

F. Upon the filing of any such petition by a shareholder, service of a copy thereof shall be made upon the surviving or resulting corporation, which, within twenty (20) days after such service, shall file in the office of the court clerk of the district court in which the petition was filed a duly verified list containing the names and addresses of all shareholders who have demanded payment for their shares and with whom agreements as to the value of their shares have not been reached by the surviving or

resulting corporation. If the petition shall be filed by the surviving or resulting corporation, the petition shall be accompanied by such a duly verified list. The court clerk, if so ordered by the court, shall give notice of the time and place fixed for the hearing of such petition by registered or certified mail to the surviving or resulting corporation and to the shareholders shown on the list at the addresses therein stated. Such notice shall also be given by one or more publications at least one (1) week before the day of the hearing, in a newspaper of general circulation published in the City of Oklahoma City, Oklahoma, or such publication as the court deems advisable. The forms of the notices by mail and by publication shall be approved by the court, and the costs thereof shall be borne by the surviving or resulting corporation.

G. At the hearing on such petition, the court shall determine the shareholders who have complied with the provisions of this section and who have become entitled to appraisal rights. The court may require the shareholders who have demanded an appraisal for their shares and who hold stock represented by certificates to submit their certificates of stock to the court clerk for notation thereon of the pendency of the appraisal proceedings; and if any shareholder fails to comply with such direction, the court may dismiss the proceedings as to such shareholder.

H. After determining the shareholders entitled to an appraisal, the court shall appraise the shares, determining their fair value exclusive of any element of value arising from the accomplishment or expectation of the merger or consolidation, together with a fair rate of interest, if any, to be paid upon the amount determined to be the fair value. In determining such fair value, the court shall take into account all relevant factors. In determining the fair rate of interest, the court may consider all relevant factors, including the rate of interest which the surviving or resulting

corporation would have to pay to borrow money during the pendency of the proceeding. Upon application by the surviving or resulting corporation or by any shareholder entitled to participate in the appraisal proceeding, the court may, in its discretion, permit discovery or other pretrial proceedings and may proceed to trial upon the appraisal prior to the final determination of the shareholder entitled to an appraisal. Any shareholder whose name appears on the list filed by the surviving or resulting corporation pursuant to the provisions of subsection F of this section and who has submitted the certificates of stock of the shareholder to the court clerk, if such is required, may participate fully in all proceedings until it is finally determined that the shareholder is not entitled to appraisal rights pursuant to the provisions of this section.

I. The court shall direct the payment of the fair value of the shares, together with interest, if any, by the surviving or resulting corporation to the shareholders entitled thereto. Interest may be simple or compound, as the court may direct. Payment shall be so made to each such shareholder, in the case of holders of uncertificated stock immediately, and in the case of holders of shares represented by certificates upon the surrender to the corporation of the certificates representing such stock. The court's decree may be enforced as other decrees in the district court may be enforced, whether such surviving or resulting corporation be a corporation of this state or of any other state.

J. The costs of the proceeding may be determined by the court and taxed upon the parties as the court deems equitable in the circumstances. Upon application of a shareholder, the court may order all or a portion of the expenses incurred by any shareholder in connection with the appraisal proceeding, including, without limitation, reasonable attorney's fees and the fees and expenses of

experts, to be charged pro rata against the value of all of the shares entitled to an appraisal.

K. From and after the effective date of the merger or consolidation, no shareholder who has demanded the appraisal rights of the shareholder as provided for in subsection D of this section shall be entitled to vote such stock for any purpose or to receive payment of dividends or other distributions on the stock, except dividends or other distributions payable to shareholders of record at a date which is prior to the effective date of the merger or consolidation; provided, however, that if no petition for an appraisal shall be filed within the time provided for in subsection E of this section, or if such shareholder shall deliver to the surviving or resulting corporation a written withdrawal of the shareholder's demand for an appraisal and an acceptance of the merger or consolidation, either within sixty (60) days after the effective date of the merger or consolidation as provided for in subsection E of this section or thereafter with the written approval of the corporation, then the right of such shareholder to an appraisal shall cease~~. Provided,~~; provided however, no appraisal proceeding in the district court shall be dismissed as to any shareholder without the approval of the court, and such approval may be conditioned upon such terms as the court deems just.

L. The shares of the surviving or resulting corporation into which the shares of such objecting shareholders would have been converted had they assented to the merger or consolidation shall have the status of authorized and unissued shares of the surviving or resulting corporation.

SECTION 47. AMENDATORY 18 O.S. 1991, Section 1100.1, is amended to read as follows:

Section 1100.1

NOTICE TO CLAIMANTS; FILING OF CLAIMS

A. 1. After a corporation has been dissolved in accordance with the procedures set forth in the Oklahoma General Corporation Act, Section 1001 et seq. of this title, the corporation or any successor entity may give notice of the dissolution ~~requesting~~ requiring all persons having a claim against the corporation other than a claim against the corporation in a pending action, suit, or proceeding to which the corporation is a party to present their claims against the corporation in accordance with ~~such~~ the notice. ~~Such~~ The notice shall state:

a. that all claims must be presented in writing and must contain sufficient information reasonably to inform the corporation or successor entity of the identity of the claimant and the substance of the claim~~;~~,

b. the mailing address to which a claim must be sent~~;~~,

c. the date by which a claim must be received by the corporation or successor entity, which date shall be no earlier than sixty (60) days from the date thereof~~;~~ ~~and~~,

d. that the claim will be barred if not received by the date referred to in subparagraph c of this paragraph,

e. that the corporation or a successor entity may make distributions to other claimants and the corporation's shareholders or persons interested as having been such without further notice to the claimant, and

f. the aggregate amount, on an annual basis, of all distributions made by the corporation to its stockholders for each of the three (3) years prior to the date the corporation dissolved.

2. ~~Such~~ The notice shall also be published at least once a week for two (2) consecutive weeks in a newspaper of general circulation in the county in which the office of the corporation's last registered agent in this state is located and in the corporation's

principal place of business and, in the case of a corporation having Ten Million Dollars ($10,000,000.00) or more in total assets at the time of its dissolution, at least once in an Oklahoma newspaper having a circulation of at least two hundred fifty thousand (250,000). On or before the date of the first publication of ~~such~~ the notice, the corporation or successor entity shall mail a copy of ~~such~~ the notice by certified or registered mail, return receipt requested, to each known claimant of the corporation including persons with claims asserted against the corporation in a pending action, suit, or proceeding to which the corporation is a party.

3. Any claim against the corporation required to be presented pursuant to this subsection is barred if a claimant who was given actual notice under this subsection does not present the claim to the dissolved corporation or successor entity by the date referred to in subparagraph c of paragraph 1 of this subsection.

4. A corporation or successor entity may reject, in whole or in part, any claim made by a claimant pursuant to this subsection by mailing notice of ~~such~~ the rejection by certified mail return receipt requested to the claimant within ninety (90) days after receipt of ~~such~~ the claim and, in all events, at least one hundred fifty (150) days before the expiration of the period described in Section 1099 of ~~Title 18 of the Oklahoma Statutes~~ this title. A notice sent by a corporation or successor entity pursuant to this subsection shall state that any claim rejected therein will be barred if an action, suit, or proceeding with respect to the claim is not commenced within one hundred twenty (120) days of the date thereof, and shall be accompanied by a copy of Sections 1099 through 1100.3 of ~~Title 18 of the Oklahoma Statutes~~ this title.

5. A claim against a corporation is barred if a claimant whose claim is rejected pursuant to paragraph 4 of this subsection does not commence an action, suit, or proceeding with respect to the

claim no later than one hundred twenty (120) days after the mailing of the rejection notice.

B. 1. A corporation or successor entity electing to follow the procedures described in subsection A of this section shall also give notice of the dissolution of the corporation to persons with claims contingent upon the occurrence or nonoccurrence of future events or otherwise conditional or unmatured, and request that such persons present ~~such~~ claims in accordance with the terms of ~~such~~ the notice. ~~Such~~ The notice shall be in substantially the form, and sent and published in the same manner, as described in paragraph 1 of subsection A of this section.

2. The corporation or successor entity shall offer any claimant whose claim is contingent, conditional, or unmatured, ~~such~~ security as the corporation or successor entity determines is sufficient to provide compensation to the claimant if the claim matures. The corporation or successor entity shall mail such offer to the claimant by certified or registered mail, return receipt requested, within ninety (90) days of receipt of ~~such~~ the claim and, in all events, at least one hundred fifty (150) days before the expiration of the period described in Section 1099 of ~~Title 18 of the Oklahoma Statutes~~ this title. If the claimant offered ~~such~~ security does not deliver in writing to the corporation or successor entity a notice rejecting the offer within one hundred twenty (120) days after receipt of ~~such~~ the offer for security, the claimant shall be deemed to have accepted ~~such~~ the security as the sole source from which to satisfy ~~his~~ the claim against the corporation.

C. 1. A corporation or successor entity which has given notice in accordance with subsection A of this section shall petition the district court to determine the amount and form of security that will be reasonably likely to be sufficient to provide compensation for any claim against the corporation which is the subject of a pending action, suit, or proceeding to which the corporation is a

party other than a claim barred pursuant to subsection A of this section.

2. A corporation or successor entity which has given notice in accordance with subsections A and B of this section shall petition the district court to determine the amount and form of security that will be sufficient to provide compensation to any claimant who has rejected the offer for security made pursuant to paragraph 2 of subsection B of this section.

~~2.~~ 3. A corporation or successor entity which has given notice in accordance with subsection A of this section shall petition the district court to determine the amount and form of security which will be sufficient to provide compensation to claimants whose claims are known to the corporation or successor entity but whose identities are unknown within five (5) years after the date of dissolution or a longer period of time as the district court may determine but not to exceed ten (10) years after the date of dissolution. The district court shall appoint a guardian ad litem to represent all claimants whose identities are unknown in any proceeding brought under this subsection. The reasonable fees and expenses of such guardian, including all reasonable expert witness fees, shall be paid by the petitioner in such proceeding.

D. The giving of any notice or making of any offer pursuant to the provisions of this section shall not revive any claim then barred or constitute acknowledgment by the corporation or successor entity that any person to whom such notice is sent is a proper claimant and shall not operate as a waiver of any defense or counterclaim in respect of any claim asserted by any person to whom such notice is sent.

E. As used in this section, the term "successor entity" shall include any trust, receivership or other legal entity governed by the laws of this state to which the remaining assets and liabilities of a dissolved corporation are transferred and which exists solely

for the purposes of prosecuting and defending suits, by or against the dissolved corporation, enabling the dissolved corporation to settle and close the business of the dissolved corporation, to dispose of and convey the property of the dissolved corporation, to discharge the liabilities of the dissolved corporation, and to distribute to the dissolved corporation's shareholders any remaining assets, but not for the purpose of continuing the business for which the dissolved corporation was organized.

SECTION 48. AMENDATORY 18 O.S. 1991, Section 1100.2, is amended to read as follows:

Section 1100.2

PAYMENT AND DISTRIBUTION TO CLAIMANTS AND SHAREHOLDERS

A. A dissolved corporation or successor entity which has followed the procedures described in Section ~~25~~ 1100.1 of this ~~act~~ title shall:

1. Pay the claims made and not rejected in accordance with subsection A of Section ~~25~~ 1100.1 of this ~~act~~ title;

2. Post the security offered and not rejected pursuant to paragraph 2 of subsection B of Section ~~25~~ 1100.1 of this ~~act~~ title;

3. Post any security ordered by the district court in any proceeding under subsection C of Section ~~25~~ 1100.1 of this ~~act~~ title; and

4. Pay or make provision for all other obligations of the corporation or such successor entity.

Such claims or obligations shall be paid in full and any such provision for payment shall be made in full if there are sufficient funds. If there are insufficient funds, ~~such~~ claims and obligations shall be paid or provided for according to their priority, and, among claims of equal priority, ratably to the extent of funds legally available therefor. Any remaining funds shall be distributed to the shareholders of the dissolved corporation; provided, however, that ~~such~~ distribution shall not be made before

the expiration of one hundred fifty (150) days from the date of the last notice of rejections given pursuant to paragraph 3 of subsection A of Section ~~25~~ 1100.1 of this ~~act~~ title. In the absence of actual fraud, the judgment of the directors of the dissolved corporation or the governing persons of ~~such~~ the successor entity as to the provision made for the payment of all obligations under paragraph 4 of this subsection shall be conclusive.

B. A dissolved corporation or successor entity which has not followed the procedures described in Section ~~25~~ 1100.1 of this ~~act~~ title shall ~~pay~~, prior to the expiration of the period prescribed by Section 1099 of this title, adopt a plan of distribution pursuant to which the dissolved corporation or successor entity pays or ~~make~~ makes reasonable provision to pay all claims and obligations, including all contingent, conditional or unmatured claims known to the corporation or ~~such~~ the successor entity ~~and all claims which are known to the dissolved corporation or such successor entity~~ or shall make a provision which will be reasonably likely to be sufficient to provide compensation for any claim against the corporation which is the subject of a pending action, suit, or proceeding to which the corporation is a party but for which the identity of the claimant is unknown~~. Such~~ within ten (10) years after the date of dissolution. The plan of distribution shall provide that claims shall be paid in full and any such provision for payment made shall be made in full if there are sufficient funds. If there are insufficient funds, ~~such~~ the plan shall provide that claims and obligations shall be paid or provided for according to their priority and, among claims of equal priority, ratably to the extent of funds legally available therefor. Any remaining funds shall be distributed to the shareholders of the dissolved corporation.

C. Directors of a dissolved corporation or governing persons of a successor entity which has complied with subsection A or B of this

section shall not be personally liable to the claimants of the dissolved corporation.

D. As used in this section, the term "successor entity" has the meaning set forth in subsection E of Section ~~25~~ 1100.1 of this ~~act~~ title.

SECTION 49. AMENDATORY 18 O.S. 1991, Section 1140, is amended to read as follows:

Section 1140.

TRADE NAMES

A. A corporation or other business entity doing business in this state under any name other than ~~that of the corporation~~ its legal name shall file a report with the Secretary of State setting forth the trade name under which ~~such~~ the business is carried on, a brief description of the kind of business transacted under ~~such~~ the name, the address wherein ~~such~~ the business is to be carried on, the ~~corporate~~ legal name and the name and address of its registered agent in this state. The report shall be executed, acknowledged, and filed in accordance with Section ~~7~~ 1007 of this ~~act~~ title. The trade name adopted shall be such as to be distinguishable upon the records in the Office of the Secretary of State from:

1. Names of other ~~corporations~~ business entities organized under the laws of this state then existing or which existed at any time during the preceding three (3) years; or

2. Names of foreign ~~corporations registered in accordance with the laws of~~ business entities qualified to do business in this state then existing or which existed at any time during the preceding three (3) years; or

3. ~~names of then existing limited partnerships whether organized pursuant to the laws of this state or licensed or registered as foreign limited partnerships in this state; or~~

~~4.~~ Trade names or fictitious names filed with the Secretary of State; or

~~5. corporate or limited partnership names~~ 4. Names reserved with the Secretary of State.

B. As used in this section, "business entity" means a corporation, a business trust, a common law trust, a limited liability company, or any unincorporated business, including any form of partnership.

SECTION 50. AMENDATORY 18 O.S. 1991, Section 1141, is amended to read as follows:

Section 1141.

PROHIBITION ON USE OF SAME OR INDISTINGUISHABLE NAMES; EXCEPTIONS

The Secretary of State shall not accept for reservation or filing a statement or certificate containing a ~~corporate~~ name which is the same as or indistinguishable from the name of any ~~other such corporation, limited partnership,~~ business entity, as defined in Section 1 of this act, trade name, fictitious name, or ~~corporate or limited partnership~~ reserved name ~~reserved~~ filed with the Secretary of State unless one of the following is filed with the Secretary of State:

1. The written consent of the ~~other corporation, limited partnership~~ business entity or holder of the trade name, fictitious name, or reserved ~~corporate or limited partnership~~ name to use the same or indistinguishable name with the addition of one or more words to make that name distinguishable upon the records of the Secretary of State, except that the addition of words to make the name distinguishable shall not be required where ~~such~~ the written consent states that the consenting entity is about to change its name, cease to do business, withdraw from the state, or be wound up;

2. A certified copy of a final decree of a court of competent jurisdiction establishing the prior right of ~~such corporation, limited partnership,~~ the business entity or holder of a reserved ~~corporate or limited partnership~~ name, trade name, or fictitious name to the use of ~~such~~ the name in this state;

3. In the case of any foreign ~~corporation~~ business entity having a name prohibited by this section which intends to qualify to transact business within this state, a resolution ~~of its board of directors duly~~ adopting a fictitious name not prohibited by this section, which shall be used to the exclusion of its true name when transacting business within this state.

SECTION 51. AMENDATORY 18 O.S. 1991, Section 1142, as last amended by Section 1, Chapter 267, O.S.L. 1994 (18 O.S. Supp. 1994, Section 1142), is amended to read as follows:

Section 1142.

FILING AND OTHER SERVICE FEES

A. The Secretary of State, for services performed in the office of the Secretary of State and for expense of mailing, shall charge and collect the following fees:

1. For any report, document, or other paper required to be filed in the Office of the Secretary of State, a fee of Twenty-five Dollars ($25.00);

2. For reservation of corporate name, a fee of Ten Dollars ($10.00);

3. For issuing extra copies of any certificate not requiring any extra filing of papers or documents of any kind, a fee of Ten Dollars ($10.00);

4. For issuing any other certificate, a fee of Ten Dollars ($10.00);

5. For receiving a filing or indexing the annual certificate of a foreign corporation doing business in this state, or both when filed together, a fee of Ten Dollars ($10.00);

6. For preclearance of any document for filing, a fee of Fifty Dollars ($50.00);

7. For each service of process made upon and accepted by the Secretary of State, a fee of Twenty-five Dollars ($25.00);

8. For preparing and providing a written report of a record search, a fee of Five Dollars ($5.00);

9. For filing and issuing certificates of incorporation, the fee shall be one-tenth of one percent (1/10 of 1%) of the authorized capital stock of such corporation; provided, that the minimum fee for any such service shall be Fifty Dollars ($50.00); provided further, that not for profit corporations shall only be required to pay a fee of Twenty-five Dollars ($25.00);

10. For filing and issuing amended certificates of incorporation or certificates of consolidation, if the resulting corporation is a domestic corporation, merger, if the surviving corporation is a domestic corporation, restatement, reorganization, revival, extension or dissolution, the fee shall be Fifty Dollars ($50.00); provided, however, not for profit corporations shall only be required to pay a fee of Twenty-five Dollars ($25.00). If an amendment shall provide for an increase in authorized capital in excess of Fifty Thousand Dollars ($50,000.00), the filing fee shall be an amount equal to one-tenth of one percent (1/10 of 1%) of such increase;

11. For issuing a certificate to a foreign corporation to do business in this state, and filing a certificate and statement of such corporation required pursuant to the provisions of Section 1130 of this title, the fee shall be one-tenth of one percent (1/10 of 1%) of the maximum amount of capital invested by such corporation in the state at any time during the fiscal year such certificate is issued to any such foreign corporation; provided, that the minimum fee for any such service shall be Three Hundred Dollars ($300.00); provided further, that no such corporation shall be required to pay a fee on an amount in excess of its authorized capital;

12. For amended certificate of qualification of a foreign corporation, or certificate of consolidation, if the resulting corporation is a foreign corporation, merger, if the surviving

corporation is a foreign corporation, or withdrawal to a foreign corporation doing business in this state, a fee of Two Hundred Dollars ($200.00); provided, however, for a certificate solely reflecting a change of mailing address, a fee of Ten Dollars ($10.00);

13. Every foreign corporation on the anniversary of its qualification in this state each year, shall cause to be filed with the Secretary of State a certificate of its president, vice-president or other managing officers, in which shall be stated and shown the maximum amount of capital the corporation had invested in the state at any time subsequent to the issuance to it of a certificate to do business in this state and the amount of capital previously paid upon. If the amount of capital so invested as shown by said certificate exceeds the amount formerly paid upon, the corporation, at the time of filing said certificate, shall pay to the Secretary of State an additional fee equal to one-tenth of one percent (1/10 of 1%) of the amount of such excess capital so invested by the corporation in the state; provided, that no such corporation shall be required to pay a filing fee on an amount in excess of its authorized capital, or to file the certificate provided for in this paragraph after it shall have paid a filing fee on its total authorized capitalization;

14. For acting as the registered agent, a fee of One Hundred Dollars ($100.00) payable on the first day of July each year, and if not paid before the next ensuing September 1st, the Oklahoma Tax Commission shall suspend and forfeit the charter of the delinquent corporation pursuant to the procedures prescribed in Section 1212 of Title 68 of the Oklahoma Statutes. The Oklahoma Tax Commission shall collect and audit the registered agent fee authorized pursuant to this paragraph in conjunction with the collection and audit of franchise taxes as provided for in Sections 1201 through 1214 of Title 68 of the Oklahoma Statutes. All monies received by the

Oklahoma Tax Commission pursuant to the provisions of this paragraph shall be paid to the State Treasurer for deposit in the General Revenue Fund; ~~and~~

15. For any response by means of telecommunications to inquiries regarding information required to be maintained by the Secretary of State, a fee of Five Dollars ($5.00), unless otherwise provided. Fees collected pursuant to this paragraph shall be deposited in the Revolving Fund for the Office of the Secretary of State; and

16. The Secretary of State may issue photocopies or electronic image copies of instruments on file, as well as instruments, documents, and other papers not on file, and for all such photocopies or electronic image copies which are not certified, a fee of Five Dollars ($5.00) shall be paid for the first page and One Dollar ($1.00) for each additional page. The Secretary of State may also issue microfiche copies of instruments on file as well as instruments, documents, and other papers not on file, and for each such microfiche a fee of Two Dollars ($2.00) shall be paid.

B. Except as otherwise provided by law, fees paid to the Secretary of State in accordance with the provisions of the Oklahoma General Corporation Act, Section 1001 et seq. of this title, shall be properly accounted for and shall be paid monthly to the State Treasurer for deposit in the General Revenue Fund.

C. For any certificate supplied by the county clerk, ~~such~~ the clerk shall receive a fee of One Dollar ($1.00). ~~Such~~ All fees shall be properly accounted for and shall be paid into the county treasury in the same manner as other fees collected by the county clerk for the filing and recording of mortgages and deeds.

D. In any court proceeding pursuant to the provisions of the Oklahoma General Corporation Act requiring the filing of any decree, order, report or other document in the Office of the Secretary of State or in the office of any county clerk, in addition to the usual

court costs and the costs for filing in the office of the clerk of the court, fees equal to the amounts provided for in this section for such required filing shall be collected as costs in such proceedings and such amount shall be forwarded to the Secretary of State and the county clerk with the papers to be filed.

E. The provisions contained in this section relating to the payment of incorporation fees by foreign corporations are not intended and shall not be construed to relieve such corporations, where applicable, of the payment of the annual corporate franchise tax to the Oklahoma Tax Commission.

F. For the purposes of computing the fees to be collected by the Secretary of State pursuant to the provisions of this section, each share without par value shall be treated the same as a share with a par value of Fifty Dollars ($50.00), and the fees thereon shall be collected accordingly.

G. Payments for any required fees except as otherwise provided by law may be made as follows:

1. By the applicant's personal or company check, cash, or money order;

2. By a nationally recognized credit card issued to the applicant. The Secretary of State may add an amount equal to the amount of the service charge incurred, not to exceed four percent (4%) of the amount of such payment as a service charge for the acceptance of such credit card. For purposes of this paragraph, "nationally recognized credit card" means any instrument or device, whether known as a credit card, credit plate, charge plate, or by any other name, issued with or without fee by an issuer for the use of the cardholder in obtaining goods, services, or anything else of value on credit which is accepted by over one thousand merchants in this state. The Secretary of State shall determine which nationally recognized credit cards will be accepted; provided, however, the

Secretary of State must ensure that no loss of state revenue will occur by the use of such card.

SECTION 52. AMENDATORY Section 2, Chapter 148, O.S.L. 1992, as amended by Section 2, Chapter 366, O.S.L. 1993 (18 O.S. Supp. 1994, Section 2001), is amended to read as follows:

Section 2001. As used in this act, unless the context otherwise requires:

1. "Articles of organization" means documents filed under Section ~~20~~ 2004 of this ~~act~~ title for the purpose of forming a limited liability company;

2. "Bankrupt" means bankrupt under the United States Bankruptcy Code, as amended, or insolvent under any state insolvency act;

3. "Business" means any trade, occupation, profession, or other activity regardless of whether ~~engaged in~~ for gain, profit, or livelihood;

4. "Capital contribution" means anything of value that a person contributes to the limited liability company as a prerequisite for, or in connection with, membership, including cash, property, services rendered, or a promissory note or other binding obligation to contribute cash or property or to perform services;

5. "Capital interest" means the fair market value as of the date contributed of a member's capital contribution as adjusted for any additional capital contributions or withdrawals;

6. "Corporation" means a corporation formed under the laws of this state or a foreign corporation as defined in this section;

7. "Event of dissociation" means an event that causes a person to cease to be a member, as provided in Section 2036 of this title;

8. "Court" includes every court and judge having jurisdiction in the case;

9. "Foreign corporation" means a corporation formed under the laws of any state other than this state, or under the laws of the District of Columbia or any foreign country;

10. "Foreign limited liability company" means an entity that is:

a. an unincorporated association,

b. organized under the laws of a state other than the laws of this state or organized under the laws of any foreign country,

c. organized under a statute pursuant to which an association may be formed that affords to each of its members limited liability with respect to the liabilities of the entity, and

d. not required to be registered or organized under any statute of this state other than this act;

11. "Foreign limited partnership" means a limited partnership formed under the laws of any state other than this state, or under the laws of the District of Columbia or any foreign country;

12. "Limited liability company" or "domestic limited liability company" means an entity that is ~~an unincorporated association having two or more members that is~~ organized and existing under ~~the laws of~~ this ~~state~~ act;

13. "Limited partnership" means a limited partnership formed under the laws of this state or a foreign limited partnership as defined in this section;

14. "Manager" or "managers" means a person or persons designated by the members of a limited liability company to manage the limited liability company as provided in the ~~articles of organization or an~~ operating agreement;

15. "Member" means a person with an ownership interest in a limited liability company, with the rights and obligations specified under this act;

16. "Membership interest" or "interest" means all of a member's rights in the limited liability company~~, collectively,~~ including but not limited to the member's share of the limited liability company's

profits and losses ~~of the limited liability company~~, the right to receive distributions of the limited liability company's assets, and any right to vote or participate in management;

17. "Operating agreement" means any agreement of the members as to the affairs of a limited liability company and the conduct of its business;

18. "Person" means an individual, a general partnership, a limited partnership, a limited liability company, a trust, an estate, an association, a corporation or any other legal or commercial entity; and

19. "State" means a state, territory or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

SECTION 53. AMENDATORY Section 3, Chapter 148, O.S.L. 1992 (18 O.S. Supp. 1994, Section 2002), is amended to read as follows:

Section 2002. A limited liability company may be organized under this act and may conduct business in any state for any lawful purpose~~, except the business of banking and insurance~~; however, a limited liability company shall not be issued a certificate of authority to engage in the banking or trust company business pursuant to the Oklahoma Banking Code, Section 101 et seq. of Title 6 of the Oklahoma Statutes, nor may a limited liability company be issued a subsisting authority as an insurer pursuant to Section 606 of Title 36 of the Oklahoma Statutes.

SECTION 54. AMENDATORY Section 5, Chapter 148, O.S.L. 1992 (18 O.S. Supp. 1994, Section 2004), is amended to read as follows:

Section 2004. A. Two or more persons may form a limited liability company upon the filing of executed articles of organization with the Office of the Secretary of State.

B. 1. When the Office of the Secretary of State ~~files~~ accepts the articles of organization for filing, the proposed organization becomes a limited liability company ~~under the name and subject to the purposes, conditions, and provisions stated in the articles~~.

2. ~~Filing~~ Acceptance for filing of the articles of organization by the Office of the Secretary of State is conclusive evidence of the formation of the limited liability company.

SECTION 55. AMENDATORY Section 6, Chapter 148, O.S.L. 1992, as amended by Section 3, Chapter 366, O.S.L. 1993 (18 O.S. Supp. 1994, Section 2005), is amended to read as follows:

Section 2005. A. The articles of organization shall set forth:

1. The name of the limited liability company;

2. The latest date on which the limited liability company is to dissolve; and

3. The ~~street address of its principal place of business in this state and the~~ name and street address of its resident agent in this state.

B. It is not necessary to set out in the articles of organization any of the powers enumerated in this act.

SECTION 56. AMENDATORY Section 9, Chapter 148, O.S.L. 1992, as amended by Section 5, Chapter 366, O.S.L. 1993 (18 O.S. Supp. 1994, Section 2008), is amended to read as follows:

Section 2008. A. The name of each limited liability company as set forth in its articles of organization:

1. Shall contain either the words "limited liability company" or "limited company" or the abbreviations "L.L.C." or "L.C." The word "limited" may be abbreviated as "LTD." and the word "Company" may be abbreviated as "CO."; and

2. a. ~~May~~ Shall not be the same as or indistinguishable from:

(1) names upon the records in the Office of the Secretary of State of then existing limited

liability companies whether organized pursuant to the laws of this state or licensed or registered as foreign limited liability companies, ~~or~~

(2) names upon the records in the Office of the Secretary of State of corporations organized under the laws of this state or of foreign corporations registered in accordance with the laws of this state then existing or which existed at any time during the preceding three (3) years, ~~or~~

(3) names upon the records in the Office of the Secretary of State of limited partnerships formed under the laws of this state or of foreign limited partnerships registered in accordance with the laws of this state, or

(4) trade names, fictitious names, or other names reserved with the Secretary of State.

b. The provisions of subparagraph a of this paragraph shall not apply if one of the following is filed with the Secretary of State:

(1) the written consent of the other limited liability company, corporation, limited partnership, or holder of the trade name, fictitious name or other reserved name to use the same or indistinguishable name with the addition of one or more words, numerals, numbers or letters to make that name distinguishable upon the records of the Secretary of State, except that the addition of words, numerals, numbers or letters to make the name distinguishable shall not be required where such written consent states that the consenting entity is about to change its

name, cease to do business, withdraw from the state or be wound up, or

(2) a certified copy of a final decree of a court of competent jurisdiction establishing the prior right of such limited liability company or holder of a limited liability company name to the use of such name in this state.

B. A limited liability company may use a trade name that is available under subsection A if it files the trade name with the Office of the Secretary of State.

SECTION 57. AMENDATORY Section 11, Chapter 148, O.S.L. 1992, as amended by Section 6, Chapter 366, O.S.L. 1993 (18 O.S. Supp. 1994, Section 2010), is amended to read as follows:

Section 2010. A. Each limited liability company shall continuously maintain in this state~~:~~

~~1. A principal office; and~~

~~2. A~~ a resident agent for service of process on the limited liability company that is an individual resident of this state, or a domestic or qualified foreign corporation, limited liability company, or limited partnership.

B. 1. A limited liability company may designate or change its resident agent or ~~principal office~~ the address of its resident agent by filing with the Office of the Secretary of State a statement authorizing the designation or change and signed by any manager.

2. ~~A limited liability company may change the address of its resident agent by filing with the Office of the Secretary of State a statement of the change signed by any manager.~~

~~3.~~ A designation or change of a ~~principal office or~~ resident agent or address of the resident agent for a limited liability company under this subsection is effective when the Office of the Secretary of State ~~files~~ accepts the statement for filing.

C. 1. A resident agent who changes his address in the state may notify the Office of the Secretary of State of the change by filing with the Office of the Secretary of State a statement of the change signed by ~~him~~ the agent or on ~~his~~ the agent's behalf.

2. The statement shall include:

a. the name of the limited liability company for which the change is effective,

b. the new address of the resident agent, and

c. the date on which the change is effective, if to be effective after the filing date.

3. ~~If the new address of the resident agent is the same as the new address of the principal office of the limited liability company, the statement may include a change of address of the principal office if:~~

~~a. the resident agent notifies the limited liability company of the change in writing, and~~

~~b. the statement recites that the resident agent has done so.~~

~~4.~~ Unless otherwise provided in the statement, the change of address of the resident agent ~~or principal office~~ is effective when the Office of the Secretary of State ~~files~~ accepts the statement for filing.

D. 1. A resident agent may resign by filing with the Office of the Secretary of State a counterpart or photocopy of the signed resignation.

2. Unless a later time is specified in the resignation, it is effective thirty (30) days after it is filed.

SECTION 58. AMENDATORY Section 14, Chapter 148, O.S.L. 1992 (18 O.S. Supp. 1994, Section 2013), is amended to read as follows:

Section 2013. A. Except as otherwise provided in the ~~articles of organization,~~ operating agreement, or this act, a limited

liability company shall be managed by or under the authority of one or more managers who may but need not be members.

B. The ~~articles of organization or~~ operating agreement may prescribe qualifications for managers.

C. The number of managers shall be specified in or fixed in accordance with the ~~articles of organization or~~ operating agreement.

SECTION 59. AMENDATORY Section 15, Chapter 148, O.S.L. 1992, as amended by Section 7, Chapter 366, O.S.L. 1993 (18 O.S. Supp. 1994, Section 2014), is amended to read as follows:

Section 2014. Unless otherwise provided in the ~~articles of organization or~~ operating agreement:

1. The election of managers shall be by majority vote of the members; and

2. Any or all managers may be removed, with or without cause, by the written consent of the number of members or percentage of members specified in the operating agreement.

SECTION 60. AMENDATORY Section 16, Chapter 148, O.S.L. 1992, as amended by Section 8, Chapter 366, O.S.L. 1993 (18 O.S. Supp. 1994, Section 2015), is amended to read as follows:

Section 2015. The ~~articles of organization or~~ operating agreement may provide that the business of the limited liability company shall be managed without designated managers. So long as such provision continues in effect:

1. The members shall be deemed to be managers for purposes of applying provisions of this act, unless the context clearly requires otherwise;

2. The members shall have and be subject to all duties and liabilities of managers; and

3. A member signing on behalf of the limited liability company shall sign as a manager.

SECTION 61. AMENDATORY Section 17, Chapter 148, O.S.L. 1992 (18 O.S. Supp. 1994, Section 2016), is amended to read as follows:

Section 2016. Subject to the provisions of Section ~~18~~ 2017 of this ~~act~~ title:

1. A ~~manager shall discharge his duties as a manager in good faith, with the care an ordinary prudent person in a like position could exercise under similar circumstances, and in the manner he reasonably believes to be in the best interests of the limited liability company~~ member or manager shall not be liable to the limited liability company or to the members of the limited liability company for any act or failure to act on behalf of the limited liability company unless the act or omission constitutes gross negligence or willful misconduct;

2. In discharging his or her duties, a manager may rely on information, opinions, reports or statements, including financial statements and other financial data, if prepared or presented by:

a. one or more employees of the limited liability company whom the manager reasonably believes to be reliable and competent in the matters presented,

b. legal counsel, public accountants, or other persons as to matters the manager reasonably believes are within the person's professional or expert competence, or

c. a committee of managers of which he is not a member if the manager reasonably believes the committee merits confidence;

3. A ~~manager is not acting in good faith~~ manager's reliance is unwarranted if ~~he~~ the manager has knowledge concerning the matter in question that makes reliance otherwise permitted by paragraph 2 of this section unwarranted;

4. A manager is not liable for any action taken as a manager, or any failure to take any action, if ~~he~~ the manager performed the duties of ~~his~~ the office in compliance with this section; and

5. Except as otherwise provided in the ~~articles of organization or~~ operating agreement, every manager must account to the limited liability company and hold as trustee for it any profit or benefit derived by the manager without the informed consent of the members from any transaction connected with the conduct or winding up of the limited liability company or from any personal use by ~~him~~ the manager of its property.

SECTION 62. AMENDATORY Section 18, Chapter 148, O.S.L. 1992, as amended by Section 9, Chapter 366, O.S.L. 1993 (18 O.S. Supp. 1994, Section 2017), is amended to read as follows:

Section 2017. A. Subject to subsection B of this section, the ~~articles of organization or~~ operating agreement may:

1. Eliminate or limit the personal liability of a member or manager for monetary damages for breach of any duty provided for in Section 2016 of this title; and

2. Provide for indemnification of a member or manager for judgments, settlements, penalties, fines or expenses incurred in any proceeding because he is or was a member or manager.

B. No provision permitted under subsection A of this section shall limit or eliminate the liability of a manager for:

1. Any breach of the manager's duty of loyalty to the limited liability company or its members;

2. Acts or omissions ~~not in good faith or which involve intentional misconduct~~ which constitute gross negligence, willful misconduct, or a knowing violation of law; or

3. Any transaction from which the manager derived an improper personal benefit.

SECTION 63. AMENDATORY Section 19, Chapter 148, O.S.L. 1992 (18 O.S. Supp. 1994, Section 2018), is amended to read as follows:

Section 2018. Except as otherwise provided in the ~~articles of organization or~~ operating agreement, if the limited liability company has more than one manager, all decisions of the managers shall be made by majority vote of the managers.

SECTION 64. AMENDATORY Section 20, Chapter 148, O.S.L. 1992, as amended by Section 10, Chapter 366, O.S.L. 1993 (18 O.S. Supp. 1994, Section 2019), is amended to read as follows:

Section 2019. A. Every manager is an agent of the limited liability company for the purpose of its business, and the act of every manager, including the execution in the limited liability company name of any instrument for apparently carrying on the business of the limited liability company of which he is a manager, binds the limited liability company, unless the manager so acting lacks the authority to act for the limited liability company in the particular matter, and the person with whom he is dealing has knowledge of the fact that he has no such authority. The unauthorized acts of the manager shall bind the limited liability company as to persons acting in good faith who have no knowledge of the fact that the manager had no such authority.

B. Subject to the provisions of subsection A of this section and Section ~~30~~ 2019.1 of this ~~act~~ title, instruments and documents providing for the acquisition, mortgage, or disposition of real or personal property of the limited liability company shall be valid and binding upon the limited liability company if executed by one or more of its managers.

SECTION 65. AMENDATORY Section 21, Chapter 148, O.S.L. 1992, as amended by Section 12, Chapter 366, O.S.L. 1993 (18 O.S. Supp. 1994, Section 2020), is amended to read as follows:

Section 2020. A. Unless otherwise provided in the ~~articles of organization or~~ operating agreement, the members of a limited liability company shall vote in proportion to their respective capital interests. Unless the context otherwise requires, references in this act to a vote or the consent of the members shall mean a vote or consent of the members holding a majority of the capital interests. The vote or consent may be evidenced in the minutes of a meeting of the members or by a written consent in lieu of a meeting.

B. Except as required in this act, and unless otherwise provided in the ~~articles of organization or~~ operating agreement, a majority vote of the members shall be required to approve the following matters:

1. The dissolution and winding up of the limited liability company;

2. The sale, exchange, lease, mortgage, pledge or other transfer of all or substantially all of the assets of the limited liability company;

3. Merger of the limited liability company with another domestic limited liability company or other business entity; ~~and~~

4. An amendment to the ~~articles of organization or~~ operating agreement; and

5. An amendment to the articles of organization.

C. The ~~articles of organization or~~ operating agreement may alter the above voting rights and provide for any other voting rights of members.

SECTION 66. AMENDATORY Section 25, Chapter 148, O.S.L. 1992, as amended by Section 14, Chapter 366, O.S.L. 1993 (18 O.S. Supp. 1994, Section 2024), is amended to read as follows:

Section 2024. A. 1. Except as otherwise provided in the ~~articles of organization or the~~ operating agreement, a member is obligated to the limited liability company to perform any written

promise to contribute cash or property or to perform services, even if he is unable to perform because of death, disability or other reason.

2. If a member does not make the required contribution of property or services, he is obligated, at the option of the limited liability company, to contribute cash equal to that portion of value, as stated in the operating agreement, of the stated contribution that has not been made.

B. 1. The obligation of a member to make a contribution or return money or other property paid or distributed in violation of this act may be compromised only upon compliance with the operating agreement, or, if the operating agreement does not so provide, with the unanimous consent of the members.

2. A compromise shall not impair the right of any creditor to enforce the obligation or to require the obligation to be enforced if:

a. such creditor relied upon the obligation and the absence in the operating agreement of the limited liability company's authority to compromise the obligation, or

b. a duty to the creditor was breached in the making of the compromise.

C. An operating agreement may provide that the capital interest of a member who fails to make any contribution or other payment that the member is required to make shall be subject to specified remedies for, or specified consequences of, the failure. The remedy or consequence may take the form of reducing the defaulting member's capital interest in the limited liability company, subordinating the defaulting member's capital interest in the limited liability company to that of the nondefaulting members, a forced sale of the capital interest in the limited liability company, forfeiture of the capital interest in the limited liability company, the lending by

the nondefaulting members of the amount necessary to meet the commitment, a fixing of the value of the member's capital interest in the limited liability company by appraisal or by formula and redemption and sale of the member's capital interest in the limited liability company at that value, or other remedy or consequences.

SECTION 67. AMENDATORY Section 34, Chapter 148, O.S.L. 1992, as amended by Section 17, Chapter 366, O.S.L. 1993 (18 O.S. Supp. 1994, Section 2033), is amended to read as follows:

Section 2033. A. Unless otherwise provided in the ~~articles of organization or an~~ operating agreement:

1. A membership interest is assignable in whole or in part;

2. An assignment of a membership interest does not of itself dissolve the limited liability company or entitle the assignee to participate in the management and affairs of the limited liability company or become or to exercise any rights or powers of a member;

3. An assignment entitles the assignee to receive such distribution or distributions to which the assignor was entitled to the extent assigned;

4. Until the assignee of a limited liability company interest becomes a member, the assignor continues to be a member and to have the power to exercise any rights of a member, subject to the members' right to remove the assignor pursuant to Section 2036 of this title, and the removal of an assignor shall not itself cause the assignee to become a member;

5. Until an assignee of a membership interest becomes a member, the assignee has no liability as a member solely as a result of the assignment; and

6. The assignor of a membership interest is not released from his liability as a member solely as a result of the assignment.

B. The ~~articles of organization or an~~ operating agreement may provide that a member's interest in a limited liability company may be evidenced by a certificate of membership interest issued by the

limited liability company and also may provide for the assignment or transfer of any membership interest represented by such a certificate and make other provisions with respect to such certificates.

C. ~~A member ceases to be a member and to have the power to exercise any rights or powers of a member upon assignment of all of his membership interest.~~ Unless otherwise provided in the operating agreement, the pledge of, or granting of a security interest, lien, or other encumbrance in or against, any or all of the membership interest of a member is not an assignment and shall not cause the member to cease to be a member or to have the power to exercise any rights or powers of a member.

SECTION 68. AMENDATORY Section 36, Chapter 148, O.S.L. 1992, as amended by Section 19, Chapter 366, O.S.L. 1993 (18 O.S. Supp. 1994, Section 2035), is amended to read as follows:

Section 2035. A. An assignee of an interest in a limited liability company may become a member if and to the extent that:

1. The ~~articles of organization or an~~ operating agreement provides; or

2. The members consent in writing.

B. An assignee who becomes a member, to the extent assigned, has the rights and powers, and is subject to the restrictions and liabilities, of a member under the ~~articles of organization, any~~ operating agreement and this act. However, unless otherwise provided in the ~~articles of organization, an~~ operating agreement or other written agreement, an assignee who becomes a member also is liable for any obligations of his assignor to make contributions as provided in Section 2024 of this title, but shall not be liable for the obligations of his assignor under Section 2031 of this title. However, the assignee is not obligated for liabilities of which the assignee had no knowledge at the time he became a member and which could not be ascertained from a written operating agreement.

C. Regardless of whether an assignee of an interest becomes a member, the assignor is not released from ~~his~~ liability to the limited liability company under Sections 2024 and 2031 of this title.

D. Except as otherwise provided in writing in the operating agreement, a member who assigns his or her entire interest in the limited liability company ceases to be a member or to have the power to exercise any rights of a member when any assignee of his interest becomes a member with respect to the assigned interest.

E. Subject to subsection F of this section, a person acquiring a limited liability company interest directly from the limited liability company may become a member in a limited liability company upon compliance with the operating agreement or, if the operating agreement does not so provide in writing, upon the written consent of the members.

F. The effective time of admission of a member to a limited liability company shall be the later of:

1. The date the limited liability company is formed; or

2. The time provided in the operating agreement, or if no such time is provided therein, then when the person's admission is reflected in the records of the limited liability company.

SECTION 69. AMENDATORY Section 37, Chapter 148, O.S.L. 1992, as amended by Section 20, Chapter 366, O.S.L. 1993 (18 O.S. Supp. 1994, Section 2036), is amended to read as follows:

Section 2036. A. A person ceases to be a member of a limited liability company upon the occurrence of one or more of the following events:

1. The member withdraws by voluntary act from the limited liability company as provided in subsection C of this section;

2. The member ceases to be a member of the limited liability company as provided in Section ~~2034~~ 2035 of this title;

3. The member is removed as a member either:

a. in accordance with the operating agreement, or

b. except as provided in writing in the operating agreement, when the member assigns all of his interest in the limited liability company~~,~~ and the assignment is consented to by an affirmative vote of ~~a majority in number~~ all of the members who have not assigned their interests;

4. ~~Subject to contrary written provision~~ Except as otherwise provided in ~~the~~ a written operating agreement~~,~~ or upon written consent of all other members when:

a. ~~when~~ the member:

(1) makes an assignment for the benefit of creditors,

(2) files a voluntary petition in bankruptcy,

(3) is adjudicated as bankrupt or insolvent,

(4) files a petition or answer seeking for himself or herself any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law or regulation,

(5) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against him in any proceeding of this nature, or

(6) seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the member or of all or any substantial part of his properties,

b. after one hundred twenty (120) days from the commencement of any proceeding against the member seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation, the

proceeding has not been dismissed, or if within ninety (90) days after the appointment without his consent or acquiescence of a trustee, receiver, or liquidator of the member or of all or any substantial part of his properties, the appointment is not vacated or stayed or within ninety (90) days after the expiration of any stay, the appointment is not vacated,

c. ~~when,~~ in the case of a member who is an individual:

(1) his death, or

(2) the entry of an order by a court of competent jurisdiction adjudicating ~~him~~ the member incompetent to manage ~~his~~ or her person or ~~his~~ estate,

d. ~~when,~~ in the case of a member who is a trust or is acting as a member by virtue of being a trustee of a trust, the termination of the trust, but not merely the substitution of a new trustee,

e. ~~when,~~ in the case of a member that is a separate limited liability company, the dissolution and commencement of winding up of the separate limited liability company,

f. ~~when,~~ in the case of a member that is a corporation, the filing of a certificate of its dissolution or the equivalent for the corporation or the revocation of its charter and the lapse of ninety (90) days after notice to the corporation of revocation without a reinstatement of its charter, or

g. ~~when,~~ in the case of an estate, the distribution by the fiduciary of the estate's entire interest in the limited liability company.

B. The members may provide in writing in the operating agreement for other events ~~the occurrence of~~ which result in a person ceasing to be a member of the limited liability company.

C. Unless the operating agreement specifically denies in writing the power to withdraw voluntarily, a member may withdraw at any time by giving ninety (90) days' written notice to the other members or the notice required by the operating agreement. Unless the operating agreement specifically provides in writing a right to withdraw voluntarily, or if the withdrawal occurs as a result of otherwise wrongful conduct of the member, a member's voluntary withdrawal shall constitute a breach of the operating agreement and the limited liability company may recover from the withdrawing member damages, including the reasonable cost of replacing the services that the withdrawn member was obligated to perform. The limited liability company may offset its damages against the amount otherwise distributable to the member, in addition to pursuing any remedies provided for in the operating agreement or otherwise available under applicable law. The limited liability company shall not, however, be entitled to any equitable remedy that would prevent a member from exercising his power to withdraw unless such power was denied in the operating agreement.

D. If a member who is an individual dies or a court of competent jurisdiction adjudges him to be incompetent to manage his person or his property, the member's executor, administrator, guardian, conservator, or other legal representative has all of the rights of an assignee of the member's interest.

SECTION 70. AMENDATORY Section 38, Chapter 148, O.S.L. 1992, as amended by Section 21, Chapter 366, O.S.L. 1993 (18 O.S. Supp. 1994, Section 2037), is amended to read as follows:

Section 2037. ~~A.~~ A limited liability company is dissolved and its affairs shall be wound up upon the earlier of:

1. The time or the occurrence of events specified in writing in the ~~articles of organization or~~ operating agreement;

2. The written consent of ~~all of~~ the members;

3. An event of dissociation of a member, unless the limited liability company is continued either by the unanimous consent of the remaining members within ninety (90) days following the occurrence of any such event or as otherwise provided in writing in the operating agreement; or

4. Entry of a decree of judicial dissolution under Section 2038 of this title.

SECTION 71. AMENDATORY Section 40, Chapter 148, O.S.L. 1992, as amended by Section 22, Chapter 366, O.S.L. 1993 (18 O.S. Supp. 1994, Section 2039), is amended to read as follows:

Section 2039. A. Except as otherwise provided in the ~~articles of organization or~~ operating agreement:

1. The business or affairs of the limited liability company may be wound up in one of the following ways:

a. by the managers, or

b. if one or more of the members or managers have engaged in conduct that casts reasonable doubt on their ability to wind up the business or affairs of the limited liability company, or upon other cause shown, by the district court on application of any member, ~~his~~ the member's legal representative, or assignee; and

2. The persons winding up the business or affairs of the limited liability company may, in the name of, and for and on behalf of, the limited liability company:

a. prosecute and defend suits,

b. settle and close the business of the limited liability company,

c. dispose of and transfer the property of the limited liability company,

d. discharge the liabilities of the limited liability company, and

e. distribute to the members any remaining assets of the limited liability company.

B. Except as provided in subsections C and D ~~and E~~ of this section, after an event causing dissolution of the limited liability company any manager can bind the limited liability company:

1. By any act appropriate for winding up the limited liability company's affairs or completing transactions unfinished at dissolution; and

2. By any transaction that would have bound the limited liability company if it had not been dissolved, if the other party to the transaction does not have notice of the dissolution.

C. ~~The filing of the articles of dissolution shall be presumed to constitute notice of dissolution for purposes of paragraph 2 of subsection B of this section.~~

~~D.~~ An act of a manager or member that is not binding on the limited liability company pursuant to subsection B of this section is binding if it is otherwise authorized by the limited liability company.

~~E.~~ D. An act of a manager or member that would be binding under subsection B or would be otherwise authorized but that is in contravention of a restriction on authority shall not bind the limited liability company to persons having knowledge of the restriction.

SECTION 72. AMENDATORY Section 43, Chapter 148, O.S.L. 1992 (18 O.S. Supp. 1994, Section 2042), is amended to read as follows:

Section 2042. A. Subject to the Constitution of this state:

1. The laws of ~~the~~ this state or other jurisdiction under which a foreign limited liability company is organized shall govern its organization and internal affairs and the liability of its managers and members; and

2. A foreign limited liability company may not be denied registration by reason of any difference between those laws and the laws of this state.

B. A foreign limited liability company holding a valid registration in this state shall have no greater rights and privileges than a domestic limited liability company. The registration shall not be deemed to authorize the foreign limited liability company to exercise any of its powers or purposes that a domestic limited liability company is forbidden by law to exercise in this state.

C. The provisions of this section shall apply to limited liability partnerships and other entities formed under the laws of another state or jurisdiction, if the nature of such partnership or entity is comparable to a limited liability company formed under this act.

SECTION 73. AMENDATORY 36 O.S. 1991, Section 1422, is amended to read as follows:

Section 1422. As used in this act:

1. "Commissioner" means the State Insurance Commissioner;

2. "Insurance consultant" means an individual, partnership, limited liability company, or corporation who, for a fee, holds himself, herself, or itself out to the public as engaged in the business of offering any advice, counsel, opinion, or service with respect to the benefits, advantages, or disadvantages promised under any policy of insurance that could be issued or delivered in this state;

3. "Insurance agent" means an individual, partnership, limited liability company, or corporation appointed by an insurer to solicit

applications for a policy of insurance or to negotiate a policy of insurance on its behalf.

Any person not duly licensed as an insurance agent, surplus lines insurance broker, or limited insurance representative who solicits a policy of insurance on behalf of an insurer shall be deemed to be acting as an insurance agent within the ~~intent~~ meaning of this act, and shall thereby become liable for all the duties, requirements, liabilities, and penalties to which an insurance agent of ~~such~~ the company is subject, and ~~such~~ the company by issuing ~~such~~ the policy of insurance shall thereby accept and acknowledge ~~such~~ the person as its agent in ~~such~~ the transaction;

4. "Limited insurance representative" means an individual, partnership, limited liability company, or corporation who is authorized by the Commissioner to solicit or negotiate contracts for a particular line of insurance as provided in Section ~~4~~ 1424 of this ~~act~~ title, which the Legislature hereby determines does not require the professional competency demanded for an insurance agent's license;

5. "Managing general agent" means an individual, partnership, limited liability company, or corporation appointed, as an independent contractor, by one or more insurers to exercise general supervision over the business of the insurer in ~~Oklahoma~~ this state, with authority to appoint agents for ~~such~~ the insurer, and to terminate appointments for ~~such~~ the insurer;

6. "Surplus lines insurance broker" means an individual, partnership, limited liability company, or corporation who solicits, negotiates, or procures a policy of insurance in an insurance company not licensed to transact business in this state which cannot be procured from insurers licensed to do business in this state. All transactions under such license shall be subject to Article 11 of ~~Title 36~~ this title.

SECTION 74. AMENDATORY 37 O.S. 1991, Section 163.2, is amended to read as follows:

Section 163.2 In the administration of this act, Section 163.1 et seq. of this title, the following words and phrases are given the meanings respectively indicated:

(a) "Nonintoxicating beverages" means ~~and includes~~ beverages containing more than one-half of one percent (1/2 of 1%) alcohol by volume, and not more than three and two-tenths percent (3.2%) alcohol by weight, including but not limited to, beer or cereal malt beverages obtained by the alcoholic fermentation of an infusion of barley or other grain, malt, or similar ~~products~~ product.

(b) "Person" means ~~and includes~~ an individual, ~~a~~ trust, or estate, ~~a~~ any type of partnership, a limited liability company, an association, or a corporation.

(c) "Manufacturer" means ~~and includes~~ any person who prepares for human consumption by the use of raw materials or other ingredients any nonintoxicating beverages~~, as defined herein,~~ upon which a license fee and a tax are imposed by any law of this state.

(d) "Wholesaler" means ~~and includes~~ any person who sells any nonintoxicating beverage~~, as defined herein,~~ to a licensed retail dealer~~, as hereinafter defined,~~ for resale.

(e) "Retail dealer" means ~~and includes~~ any person who sells any nonintoxicating beverage~~, as defined herein,~~ at retail for consumption or use, and ~~such definitions include~~ includes state and county fair associations, and special licenses may be issued for the sale of nonintoxicating beverages~~, as herein defined,~~ by such associations, and to other persons for the sale of such nonintoxicating beverages at rodeos, picnics, or other organized temporary assemblages of people. The term ~~"retail dealer"~~ also includes railways used for the sale of such beverages, and licenses may be issued for each dining car or railway train, which railways

and dining cars shall pay the same license fees as regular retail dealers.

(f) "Sale" or "sales", for the purpose of the collection of the taxes imposed by any law of the state upon nonintoxicating beverages~~, as defined herein,~~ is hereby defined to mean ~~and include~~ all sales by all wholesalers within this state, for money or any other valuable consideration, to retail dealers for resale; and~~,~~ ~~also, the term "sale" or "sales" taxable under this act means and~~ includes all sales from ~~manufacturers or~~ wholesalers from outside this state~~,~~ to retail dealers for resale to consumers or otherwise~~.~~ ~~The term "sale", or "sales" shall~~; and also ~~include~~ includes sales from manufacturers without the state to wholesalers located within the state.

(g) "Meals" means foods commonly ordered at lunch or dinner and at least part of which is cooked on the licensed premises and requires the use of dining implements for consumption~~. Provided~~; provided, that the service of only food such as appetizers, sandwiches, salads, or desserts shall not be considered "meals".

(h) "Motion picture theater" means a place where motion pictures are exhibited and to which the general public is admitted, but does not include a place where meals~~, as defined by this section,~~ are served~~,~~ if only persons twenty-one (21) years of age or older are admitted.

SECTION 75. AMENDATORY 37 O.S. 1991, Section 506, as amended by Section 2, Chapter 361, O.S.L. 1994 (37 O.S. Supp. 1994, Section 506), is amended to read as follows:

Section 506. When used in the Oklahoma Alcoholic Beverage Control Act, Section 501 et seq. of this title, the following words and phrases shall have the following meaning:

1. "ABLE Commission" means the Alcoholic Beverage Laws Enforcement Commission.

2. "Alcohol" means ~~and includes~~ hydrated oxide of ethyl, ethyl alcohol, ethanol, or spirits of wine, from whatever source or by whatever process produced. It does not include wood alcohol or alcohol which has been denatured or produced as denatured in accordance with Acts of Congress and regulations promulgated thereunder.

3. "Alcoholic beverage" means alcohol, spirits, beer, and wine ~~as those terms are defined herein~~ and also includes every liquid or solid, patented or not, containing alcohol, spirits, wine, or beer and capable of being consumed as a beverage by human beings, but does not include nonintoxicating beverages as that term is defined in Section 163.2 of this title.

4. "Beer" means any beverage containing more than three and two-tenths percent (3.2%) of alcohol by weight and obtained by the alcoholic fermentation of an infusion or decoction of barley, or other grain, malt, or similar products. "Beer" may or may not contain hops or other vegetable products. "Beer" includes, among other things, beer, ale, stout, lager beer, porter and other malt or brewed liquors, but does not include sake, known as Japanese rice wine.

5. "Bottle club" means any establishment in a county which has not authorized the retail sale of alcoholic beverages by the individual drink, which is required to be licensed to keep, mix, and serve alcoholic beverages belonging to club members on club premises.

6. ~~"Brewer" means any person who produces beer in this state.~~

~~7.~~ "Class B wholesaler" means ~~and includes~~ any person doing any ~~such~~ acts or carrying on any ~~such~~ business that would require ~~such~~ the person to obtain a Class B wholesaler license hereunder.

~~8.~~ 7. "Convicted" and "conviction" mean ~~and include~~ a finding of guilt resulting from a plea of guilty or nolo contendere, the decision of a court or magistrate or the verdict of a jury,

irrespective of the pronouncement of judgment or the suspension thereof.

~~9.~~ 8. "Director" means the Director of the Alcoholic Beverage Laws Enforcement Commission under the supervision of ~~said~~ the Commission.

~~10.~~ 9. "Distiller" means any person who produces spirits from any source or substance, or any person who brews or makes mash, wort, or wash, fit for distillation or for the production of spirits (except a person making or using such material in the authorized production of wine or beer, or the production of vinegar by fermentation), or any person who by any process separates alcoholic spirits from any fermented substance, or any person who, making or keeping mash, wort, or wash, has also in his or her possession or use a still.

~~11.~~ 10. "Hotel" or "motel" shall mean an establishment which is licensed to sell alcoholic beverages by the individual drink and which contains guestroom accommodations with respect to which the predominant relationship existing between the occupants thereof and the owner or operator of the establishment is that of innkeeper and guest. For purposes of this section, the existence of other legal relationships as between some occupants and the owner or operator thereof shall be immaterial.

~~12.~~ 11. "Legal newspaper" means a newspaper meeting the requisites of a newspaper for publication of legal notices as prescribed in Sections 101 through 114 of Title 25 of the Oklahoma Statutes.

~~13.~~ 12. "Licensee" means any person holding a license under the Oklahoma Alcoholic Beverage Control Act, and any agent, servant, or employee of such licensee while in the performance of any act or duty in connection with the licensed business or on the licensed premises.

~~14.~~ 13. "Light beer" means a nonintoxicating malt beverage controlled under this title.

~~15.~~ 14. "Light wine" means any wine containing not more than fourteen percent (14%) alcohol measured by volume at sixty (60) degrees Fahrenheit.

~~16.~~ 15. "Manufacturer's agent" means a salaried or commissioned salesman who sells to a wholesaler or Class B wholesaler only.

~~17.~~ 16. "Manufacturer" means a brewer, distiller, winemaker, rectifier, or bottler of any alcoholic beverage.

~~18.~~ 17. "Meals" means foods commonly ordered at lunch or dinner and at least part of which is cooked on the licensed premises and requires the use of dining implements for consumption~~. Provided~~; provided, that the service of only food such as appetizers, sandwiches, salads, or desserts shall not be considered "meals".

~~19.~~ 18. "Mini-bar" means a closed container, either refrigerated, in whole or in part, or nonrefrigerated, and access to the interior of which is (1) restricted by means of a locking device which requires the use of a key, magnetic card, or similar device, or (2) controlled at all times by the licensee.

~~20.~~ 19. "Mixed beverage cooler" means any beverage, by whatever name designated, consisting of an alcoholic beverage and fruit or vegetable juice, fruit or vegetable flavorings, dairy products or carbonated water containing more than one-half of one percent (1/2 of 1%) of alcohol measured by volume but not more than seven percent (7%) alcohol by volume at sixty (60) degrees Fahrenheit and which is packaged in a container not larger than three hundred seventy-five (375) milliliters. Such term shall include, but not be limited to, the beverage popularly known as a "wine cooler".

~~21.~~ 20. "Mixed beverages" means one or more servings of a beverage composed in whole or part of an alcoholic beverage in a sealed or unsealed container of any legal size for consumption on

the premises where served or sold by the holder of a mixed beverage, beer and wine, caterer, or special event license.

~~22.~~ 21. "Motion picture theater" means a place where motion pictures are exhibited and to which the general public is admitted, but does not include a place where meals, as defined by this section, are served, if only persons over twenty-one (21) years of age are admitted.

~~23.~~ 22. "Retail salesman" means a ~~salesman~~ person soliciting orders from and calling upon retail alcoholic beverage stores with regard to ~~his~~ a product.

~~24.~~ 23. "Occupation" as used in connection with "occupation tax" means the sites occupied as the places of business of the manufacturers, wholesalers, Class B wholesalers, retailers, mixed beverage licensees, beer and wine licensees, bottle clubs, caterers, and special event licensees.

~~25.~~ 24. "Original package" means any container of alcoholic beverage filled and stamped or sealed by the manufacturer.

~~26.~~ 25. "Patron" means any person, customer, or visitor who is not employed by a licensee or who is not a licensee.

~~27.~~ 26. "Person" means ~~and includes~~ an individual, any type of partnership, limited liability company, corporation, or association.

~~28.~~ 27. "Premises" means the grounds and all buildings and appurtenances pertaining to the grounds including any adjacent premises if under the direct or indirect control of the licensee and the rooms and equipment under the control of the licensee and used in connection with or in furtherance of the business covered by a license~~. Provided~~; provided, that the ABLE Commission shall have the authority to designate areas to be excluded from the licensed premises solely for the purpose of:

a. allowing the presence and consumption of alcoholic beverages, not bearing serially numbered identification stamps issued by the Oklahoma Tax

Commission, by private parties which are closed to the general public, or

b. allowing the services of a caterer serving alcoholic beverages provided by a private party.

This exception shall in no way limit the licensee's concurrent responsibility for any violations of this act occurring on the licensed premises.

~~29.~~ 28. "Rectifier" means any person who rectifies, purifies, or refines spirits or wines by any process (other than by original and continuous distillation, or original and continuous processing, from mash, wort, wash, or other substance, through continuous closed vessels and pipes, until the production thereof is complete), and any person who, without rectifying, purifying, or refining spirits, shall by mixing (except for immediate consumption on the premises where mixed) such spirits, wine, or other liquor with any material, manufactures any spurious, imitation, or compound liquors for sale, under the name of whiskey, brandy, rum, gin, wine, spirits, cordials, or any other name.

~~30.~~ 29. "Regulation" or "rule" means a formal rule of general application promulgated by the ABLE Commission as herein required.

~~31.~~ 30. "Retail container for spirits and wines" means an original package of a capacity not less than one-twentieth (1/20) gallon specified by the ABLE Commission in its regulations for the alcoholic beverage concerned, or an original package with a capacity of less than one-twentieth (1/20) gallon, referred to as miniatures.

~~32.~~ 31. "Retailer" means the holder of a Package Store License.

~~33.~~ 32. "Sale" means any transfer, exchange, or barter in any manner or by any means whatsoever, ~~and includes~~ and means all sales made by any person, whether as principal, proprietor ~~or as an~~, agent, servant, or employee. The term "sale" is also declared to ~~be and~~ include the use or consumption in this state of any alcoholic beverage obtained within or imported from without this state, upon

which the excise tax levied by the Oklahoma Alcoholic Beverage Control Act has not been paid or exempted.

~~34.~~ 33. "Short order food" means food other than full meals including but not limited to sandwiches, soups, and salads~~.~~ ~~Provided~~; provided, that popcorn, chips, and other similar snack food shall not be considered "short order food".

~~35.~~ 34. "Sparkling wine" means champagne or any artificially carbonated wine.

~~36.~~ 35. "Spirits" means any beverage other than wine, beer or light beer, which contains more than one-half of one percent (1/2 of 1%) alcohol measured by volume and obtained by distillation, whether or not mixed with other substances in solution and includes those products known as whiskey, brandy, rum, gin, vodka, liqueurs, cordials and fortified wines and similar compounds; but shall not include any alcohol liquid completely denatured in accordance with the Acts of Congress and regulations pursuant thereto.

~~37.~~ 36. "Wholesaler" means ~~and includes~~ any person doing any ~~such~~ acts or carrying on any ~~such~~ business or businesses that would require ~~such~~ the person to obtain a wholesaler's license or licenses hereunder.

~~38.~~ 37. "Wine" means and includes any beverage containing more than one-half of one percent (1/2 of 1%) alcohol by volume and not more than twenty-four percent (24%) alcohol by volume at sixty (60) degrees Fahrenheit obtained by the fermentation of the natural contents of fruits, vegetables, honey, milk or other products containing sugar, whether or not other ingredients are added, and includes vermouth and sake, known as Japanese rice wine.

~~39.~~ 38. "Winemaker" means any person who produces wine.

~~40.~~ 39. "Oklahoma winemaker" means a business premises in Oklahoma licensed pursuant to the Oklahoma Alcoholic Beverage Control Act wherein wine is produced by the licensee who must be a resident of the state. The wine product fermented in ~~said~~ the

licensed premises shall be of grapes, berries, and other fruits and vegetables imported into this state and processed herein or shall be of grapes, berries, and other fruits and vegetables grown in ~~Oklahoma~~ this state.

Words in the plural include the singular, and vice versa, and words imparting the masculine gender include the feminine, as well as persons and licensees as defined in this section.

SECTION 76. AMENDATORY 37 O.S. 1991, Section 511, is amended to read as follows:

Section 511. A. No member of the Alcoholic Beverage Laws Enforcement Commission, Director, Assistant Director, or employee of the ABLE Commission shall be appointed or serve who has been convicted of a felony or of any violation of any federal or state law relating to alcoholic beverages. No member of the ABLE Commission, Director, Assistant Director, or employee of the ABLE Commission shall directly or indirectly, individually or as a member of a partnership, or as a member or manager of a limited liability company, or as a shareholder of a corporation, have any interest whatsoever in the manufacture, sale, or distribution of alcoholic beverages, nor receive any compensation or profit therefrom, nor have any interest, directly or indirectly, in any business authorized by a license issued pursuant to the provisions of the Oklahoma Alcoholic Beverage Control Act, Section 501 et seq. of this title. The holding of membership or elective or appointed office in fraternal organizations which obtain mixed beverage or bottle club licenses shall not be considered to be engagement in the alcoholic beverage business. No member of the ABLE Commission, Director, Assistant Director, or employee of the ABLE Commission shall solicit or accept any gift, gratuity, emolument, or employment from any person subject to the provisions of the Oklahoma Alcoholic Beverage Control Act, or from any officer, agent or employee thereof, nor solicit, request from or recommend, directly or indirectly, to any

~~such~~ person or to any officer, agent or employee thereof, the appointment of any person to any place or position, and every such person, and every officer, agent or employee thereof, is hereby forbidden to offer to any member of the ABLE Commission, the Director, Assistant Director, or to any employee of the ABLE Commission, any gift, gratuity, emolument or employment. No member of the ABLE Commission, Director, Assistant Director, or employee of the ABLE Commission shall accept employment within the liquor industry for any holder of a license issued pursuant to the provisions of the Oklahoma Alcoholic Beverage Control Act, or represent, directly or indirectly, any ~~such~~ licensee in any proceedings before the Director or the ABLE Commission within two (2) years following his or her separation from the ABLE Commission. Violation of any provision of this subsection shall constitute a misdemeanor. In addition to the penal provisions, any person convicted shall be immediately removed from the office or position ~~he holds~~ held.

B. No license of any kind shall be granted to or retained by any person or any partnership containing any partner or any limited liability company with any member or manager who is related to any member of the ABLE Commission or to the Director or Assistant Director by affinity or consanguinity within the third degree. No member of the ABLE Commission nor the Director or Assistant Director shall be entitled to receive any compensation or other monies from the State of Oklahoma while a license is held in violation of the provisions of this subsection.

C. It shall be unlawful for any member of the ABLE Commission, the Director, Assistant Director, any inspector, attorney or other agent or employee of the ABLE Commission, to actively participate, as a candidate or otherwise, in any political campaign held in this state. Nor shall any ~~such~~ member of the ABLE Commission, Director, Assistant Director, or other agent or employee of the ABLE

Commission lend, expend, or contribute any money, funds, property, or other thing of value, or use ~~his~~ an official position, for the purpose of securing the nomination or election or the defeat of any candidate for public office in ~~the State of Oklahoma~~ this state. Any person who shall violate the provisions of this subsection shall, upon conviction, be fined not less than Two Thousand Five Hundred Dollars ($2,500.00) nor more than Five Thousand Dollars ($5,000.00), or imprisoned in the county jail for not more than one (1) year, or both such fine and imprisonment. Any person found guilty of violating the provisions of this subsection shall, in addition to the criminal penalty imposed herein, be removed or discharged from the office or position ~~he holds~~ held upon conviction and shall not be rehired to any state position.

D. If the voters of a county in which a state lodge is located approve sale of alcoholic beverages by the individual drink for on-premises consumption, then ~~such~~ the sale of alcoholic beverages on the premises of ~~such~~ a lodge shall be authorized if a license for such sale, issued pursuant to the provisions of the Oklahoma Alcoholic Beverage Control Act, is obtained~~. Provided,~~; provided further, that a bottle club may be licensed on the premises of a state lodge located in a county where sale of alcoholic beverages by the individual drink for on-premises consumption is not authorized.

E. The provisions of subsection D of this section shall not prohibit the state or a political subdivision of the state from leasing a public building or facility to a person who obtains a mixed beverage license, bottle club license, special event license, contracts for the services of a licensed caterer, or subleases the building or facility to a person who obtains a mixed beverage license, bottle club license, special event license, or contracts for the services of a licensed caterer.

F. ~~Provided, that nothing~~ Nothing in this section shall prohibit the sale of alcoholic beverage legally confiscated as provided by law.

SECTION 77. AMENDATORY 37 O.S. 1991, Section 527, as amended by Section 2, Chapter 180, O.S.L. 1993 (37 O.S. Supp. 1994, Section 527), is amended to read as follows:

Section 527. The Alcoholic Beverage Laws Enforcement Commission shall refuse to issue a wholesaler, Class B wholesaler, or package store license either on an original application or a renewal application, if it has reasonable grounds to believe and finds any of the following to be true:

1. That the applicant is not a citizen of the United States or is not a qualified elector in this state, or has not been a continuous resident of this state for the ten (10) years next preceding the application for the license;

2. That the applicant is under twenty-one (21) years of age;

3. That the applicant or any partner, or spouse of the applicant or any partner, has been convicted of a felony;

4. That the applicant or any partner, or spouse of the applicant or any partner, has been convicted of a violation of any state or federal law relating to alcoholic beverages, has forfeited a bond while any charge of ~~such~~ a violation was pending ~~against him~~, nor may any license be granted for any purpose under the Oklahoma Alcoholic Beverage Control Act, Section 501 et seq. of this title, to ~~an Oklahoma~~ a resident of this state, who has held or whose spouse has held a Federal Liquor Stamp in ~~Oklahoma~~ this state before the adoption of Article XXVII of the Oklahoma Constitution unless ~~said~~ the Federal Liquor Stamp was granted for supplying alcoholic beverages to a federal military installation, or was granted under this title;

5. That the applicant or any partner has, within twelve (12) months next preceding the date of the application, violated any

provision of the Oklahoma Alcoholic Beverage Control Act or regulation of the ABLE Commission issued pursuant hereto~~. Provided~~; provided, however, that if the ABLE Commission has, during ~~said~~ the twelve-month period, suspended any license sought to be renewed, ~~such~~ the renewal application may be approved if the term of the suspension has been completed and the applicant has complied with any special conditions imposed in connection with the suspension;

6. That the applicant is not of good moral character, or that the applicant is in the habit of using alcoholic beverages to excess, or is mentally incapacitated~~. Provided~~; provided, that the record in any municipal court showing a conviction of violation of any municipal ordinances or state statutes involving moral character or public nuisance obtained after passage and approval of the Oklahoma Alcoholic Beverage Control Act shall be received in evidence by the ABLE Commission;

7. That the applicant does not own or have a written lease for at least a period of one (1) year on the premises for which a license is sought;

8. That the applicant has, within twelve (12) months next preceding the date of application, been the holder of a license revoked for cause;

9. That the applicant is not the real party in interest, or intends to carry on the business authorized by the license as the agent of another;

10. That the applicant, in the case of an application for renewal of any license, would not be eligible for ~~such~~ a license on a first application;

11. That the applicant is a person who appoints or is a law enforcement official or is an employee of the ABLE Commission or of the Director;

12. That the proposed location of the licensed premises would violate a valid municipal nondiscriminatory zoning ordinance;

13. That, in the case of an application for a wholesaler license, or Class B wholesaler license, any manufacturer, including an officer, director or principal stockholder ~~thereof, or~~ of a corporate manufacturer, any partner of a general or limited partnership manufacturer, or any member or manager of a limited liability company manufacturer, has any financial interest in the business to be conducted under the license;

14. That the issuance of the license applied for would result in a violation of any provision of the Oklahoma Alcoholic Beverage Control Act;

15. That, in the case of an application for a wholesaler or Class B wholesaler license, the applicant or any partner, or spouse of the applicant or any partner, is the holder or partner of the holder of any other class of license issued under the provisions of the Oklahoma Alcoholic Beverage Control Act, other than an agent or employee license for employment by the applicant, or a storage license, bonded warehouse license, carrier license, or private carrier license; or

16. That, in the case of an application for a package store license the applicant or any partner, or the spouse of the applicant or any partner, is the holder or partner of the holder, or employee of such holder of any other class of license issued under the provisions of the Oklahoma Alcoholic Beverage Control Act, other than a storage license or an employee license for the proposed licensed premises of the applicant or of a retail dealer's permit for the same location issued by the Oklahoma Tax Commission for the sale of nonintoxicating beverages for consumption on the premises as provided by Section 163.7 of this title.

SECTION 78. AMENDATORY 37 O.S. 1991, Section 528, is amended to read as follows:

Section 528. A. Any license issued pursuant to the provisions of the Oklahoma Alcoholic Beverage Control Act, Section 501 et seq.

of this title, by order of the Alcoholic Beverage Laws Enforcement Commission, after due notice and hearing, may be revoked or suspended if the ABLE Commission finds or has grounds to believe that the licensee has:

1. Violated any rule adopted by the ABLE Commission;

2. Procured a license through fraud, or misrepresentation, or concealment of a material fact;

3. Made any false representation or statement to the ABLE Commission in order to prevent or induce action by the ABLE Commission;

4. Maintained an unsanitary establishment or has supplied impure or otherwise deleterious beverages or food;

5. Stored, possessed, mixed, or served on the premises of a bottle club any alcoholic beverage upon which the tax levied by Section 553 of this title has not been paid as provided for in the Oklahoma Alcoholic Beverage Control Act, in a county of this state where the sale of alcoholic beverages by the individual drink for on-premises consumption has not been authorized;

6. Misrepresented to a customer or the public any alcoholic beverage sold by the licensee; or

7. Had any permit or license issued by the Oklahoma Tax Commission and required by the Oklahoma Alcoholic Beverage Control Act, suspended or revoked by the Tax Commission.

B. The ABLE Commission may revoke or suspend the license of any mixed beverage, caterer, or bottle club licensee if the ABLE Commission finds or has grounds to believe that such licensee:

1. Has acted as an agent of a manufacturer or wholesaler of alcoholic beverages;

2. Is a manufacturer or wholesaler of alcoholic beverages;

3. Has borrowed money or property or accepted gratuities or rebates from a manufacturer or wholesaler of alcoholic beverages;

4. Has obtained the use of equipment from any manufacturer or wholesaler of alcoholic beverages or any agent thereof;

5. Has violated any of the provisions of the Oklahoma Alcoholic Beverage Control Act for which mandatory revocation or suspension is not required; or

6. Has been convicted on or after July 1, 1985, of a violation of any state or federal law relating to alcoholic beverage for which mandatory revocation or suspension is not required.

C. The ABLE Commission shall revoke the license of any licensee if ~~said~~ the Commission finds:

1. That the licensee knowingly sold alcoholic beverages or allowed such beverages to be sold, delivered or furnished to any person under the age of twenty-one (21) years, or to any person visibly intoxicated or adjudged insane or mentally deficient;

2. That the licensee, any general or limited partner of the licensee partnership, any member or manager of the licensee limited liability company, or in the case of a licensee corporation, an officer or director of the corporation, has been convicted of a felony;

3. That, in the case of a wholesaler, Class B wholesaler, or retail package store licensee, the holder of the license or any member of a general or limited partnership which is the holder of such a license, has been convicted of a prohibitory law relating to the sale, manufacture, or transportation of alcoholic beverages which constitutes a felony or a misdemeanor.

D. If the ABLE Commission shall find by a preponderance of the evidence ~~as in civil cases~~ that the holder of a package store license has knowingly sold any alcoholic beverage to any person under the age of twenty-one (21) years, after a public hearing it shall revoke ~~said~~ the license and no discretion ~~as to said revocation~~ shall be exercised by the ABLE Commission.

E. The ABLE Commission shall have the authority to promulgate rules and regulations to establish a penalty schedule for violations of any provision of the Oklahoma Alcoholic Beverage Control Act or any rule or regulation of the ABLE Commission. The schedule shall provide for suspension or revocation of any license for major and minor violations as determined by the ABLE Commission. Penalties shall be increasingly severe with each violation by a licensee~~.~~ ~~Provided~~; provided, that for a fourth major violation by a licensee within a twenty-four-month period the penalty shall be mandatory revocation of license. The twenty-four-month period shall be calculated from the date of the most recent violation as set forth in an order signed by the Director or ~~the~~ designee of the Director.

F. The ABLE Commission may impose a monetary penalty in lieu of or in addition to suspension of a license. The amount of fine for a major violation shall be computed by multiplying the proposed number of days of the suspension period by One Hundred Dollars ($100.00). The amount of fine for a minor violation shall be computed by multiplying the number of days of the proposed suspension period by Fifty Dollars ($50.00).

G. The failure of any licensee to pay a fine or serve a suspension imposed by the ABLE Commission shall result in the revocation of the license of said licensee.

H. If the ABLE Commission finds that public health, safety, or welfare require emergency action, and incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceeding for revocation or other action, pursuant to the provisions of Section 314 of Title 75 of the Oklahoma Statutes.

SECTION 79. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 401 of Title 54, unless there is created a duplication in numbering, reads as follows:

Sections 52 through 57 of this act shall be known and may be cited as the Oklahoma Limited Liability Partnership Act.

SECTION 80. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 402 of Title 54, unless there is created a duplication in numbering, reads as follows:

A. A partnership shall become or continue as a registered limited liability partnership by filing with the Secretary of State an application or a renewal application stating the following:

1. The name of the partnership;

2. The address of its principal office, or if the partnership's principal office is not located in this state, the address of a registered office and the name and address of a registered agent for service of process in this state which the partnership shall be required to maintain;

3. The number of partners;

4. A brief statement of the business in which the partnership engages and that the partnership applies for status or renewal of its status as a registered limited liability partnership.

B. The application or renewal application shall be executed by a majority in interest of the partners or by one or more partners authorized to execute an application or renewal application.

C. The application or renewal application shall be accompanied by a fee of One Hundred Dollars ($100.00) for each partner; provided, that the fee payable for any year shall not exceed Five Hundred Dollars ($500.00).

D. The Secretary of State shall register a limited liability partnership and shall renew the registration of any registered limited liability partnership that submits a completed application or renewal application with the required fee.

E. Registration is effective for one (1) year after the date an application is filed, unless voluntarily withdrawn by filing with the Secretary of State a written withdrawal notice executed by a majority in interest of the partners or by one or more partners authorized to execute a withdrawal notice. Registration, whether

pursuant to an original application or a renewal application, as a registered limited liability partnership is renewed if, during the sixty-day period preceding the date the application or renewal application otherwise would have expired, the partnership files a renewal application with the Secretary of State. A renewal application expires one (1) year after the date an original application would have expired if the last renewal of the application had not occurred.

F. The status of a partnership as a registered limited liability partnership shall not be affected by changes after the filing of an application or a renewal application in the information stated in the application or renewal application.

SECTION 81. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 403 of Title 54, unless there is created a duplication in numbering, reads as follows:

The name of a registered limited liability partnership shall contain the words "Limited Liability Partnership" or the abbreviation "L.L.P." as the last words or letters of its name. If the name of the registered limited liability partnership conflicts with another name filed with the Secretary of State, the registered limited liability partnership may register:

1. Under the conflicting name if the partnership seeking registration files a consent to similar name signed by the other party who agrees to change its name to eliminate the conflict or to withdraw from the state or dissolve its business; or

2. Under a nonconflicting, assumed name which shall be used when doing business in this state.

SECTION 82. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 404 of Title 54, unless there is created a duplication in numbering, reads as follows:

A. Subject to subsection B of this section, all partners in a registered limited liability partnership are liable jointly and

severally for the partnership's obligations unless otherwise agreed by the claimant or otherwise provided by law; provided, that a partner in a registered limited liability partnership is not liable for debts and obligations of the partnership arising from negligence, wrongful acts, or misconduct committed by another partner, or an employee, agent, or representative of the partnership while the partnership is a registered limited liability partnership and in the course of the partnership business.

B. Subsection A of this section shall not affect the liability of a partner in a registered limited liability partnership for negligence, wrongful acts, or misconduct, or that of any person under the partner's direct supervision and control.

SECTION 83. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 405 of Title 54, unless there is created a duplication in numbering, reads as follows:

A. A registered limited liability partnership shall carry at least One Million Dollars ($1,000,000.00) of liability insurance of a kind that is designed to cover the kinds of negligence, wrongful acts, and misconduct for which liability is limited by Section 55 of this act and which insures the partnership and its partners.

B. If, in any proceeding, compliance by a partnership with the requirements of subsection A of this section is disputed, that issue shall be determined by the court, and the burden of proof of compliance shall be on the person who claims the limitation of liability in Section 55 of this act.

C. If a registered limited liability partnership is in compliance with the requirements of subsection A of this section, the requirements of this section shall not be admissible or in any way be made known to a jury in determining an issue of liability for or extent of the debt or obligation or damages in question.

D. A registered limited liability partnership is considered to be in compliance with subsection A of this section if the

partnership provides One Million Dollars ($1,000,000.00) of funds specifically designated and segregated for the satisfaction of judgments against the partnership or its partners based on the kinds of negligence, wrongful acts, and misconduct for which liability is limited by Section 55 of this act by:

1. Deposit in trust or in bank escrow of cash, bank certificates of deposit, or United States Treasury obligations; or

2. A bank letter of credit or insurance company bond.

SECTION 84. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 406 of Title 54, unless there is created a duplication in numbering, reads as follows:

A. A partnership, including a registered limited liability partnership formed and existing under this act, may conduct its business, carry on its operations, and have and exercise the powers granted by this chapter in any state, territory, district, or possession of the United States, or in any foreign country.

B. The internal affairs of a registered limited liability partnership, including the liability of partners for debts and obligations of partnerships, shall be subject to and governed by the laws of the state of its formation unless the state does not recognize registered limited liability partnerships, in which case the laws of this state shall govern claims made within this state.

C. The provisions of the Oklahoma Uniform Partnership Act, as amended, Section 201 et seq. of this title, shall apply to any case for which this act does not provide.

SECTION 85. REPEALER 18 O.S. 1991, Sections 808 and 1003, are hereby repealed.

SECTION 86. This act shall become effective November 1, 1995.

45-1-0989 KSM