

ENGROSSED SENATE
BILL NO. 1190

By: Easley of the Senate
and
Toure of the House

[corporations - 18 O.S. 1991 - Oklahoma General
Corporation Act -
repealing 18 O.S.
1991 - rights,
liabilities and
duties -
effective date]

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

SECTION 1. AMENDATORY 18 O.S. 1991, Section 1006, as amended by Section 1, Chapter 99, O.S.L. 1992 (18 O.S. Supp. 1995, 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 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. a. If the corporation is not for profit~~;~~l
~~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.~~

The restriction on affording pecuniary gain to members shall not prevent a not-for-profit corporation from operating as a cooperative

~~from~~ and rebating excess revenues to patrons who may also be members.

- 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~~ one or ~~all~~ more 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 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 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~~ 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~~ of the shareholders or class of shareholders of this corporation, as the case may be, to be summoned in such 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~~ 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 corporation as a consequence of such 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~~ on all the shareholders or class of shareholders, of this corporation, as the case may be, and also on this corporation.";

3. Such 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~~ the shareholder 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 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.

No such provision shall eliminate or limit the liability of a director for any act or omission occurring prior to the date when such 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 2. 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~~ the certificate is filed. There shall be ~~included in the~~ 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~~ an authorized officer thereof, 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 known, 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 known, 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 or other similar failure of delivery.

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 registered agent. If ~~such the~~ 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)~~ thirty (30) 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 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 3. 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 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, 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~~ the person in connection with ~~such~~ the 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 by or in the right of the corporation to procure a judgment in its favor ~~by reason of the fact that he~~ because 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, actually and reasonably incurred by ~~him~~ the person in connection with the defense or settlement of such action or suit 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 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 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~~ the expenses which the court shall deem 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~~ that person shall be indemnified against expenses, including attorneys' fees, actually and reasonably incurred by ~~him~~ that person 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~~ that person has met the applicable standard of conduct set forth in subsection A or B of this section. ~~Such~~ This determination shall be made:

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

2. If ~~such a quorum is not obtainable, or, even if obtainable a quorum of disinterested~~ there are no directors who are not parties,

or if the directors who are not parties so directs 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~~ the amount if it shall ultimately be determined that ~~he~~ the director or officer is not entitled to be indemnified by the corporation as authorized by the provisions of this section. ~~Such expenses~~ Expenses incurred by other employees and agents may be ~~so~~ paid upon such 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~~ provisions 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~~ the person's official capacity and as to action in another capacity while holding such 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 constituent corporation, or is or was serving at the request of such 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 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 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~~ for 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 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 which may include attorneys' fees.

SECTION 4. 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 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 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 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 shall apply to all or any such classes of stock.

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, 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~~ Article 8 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 5. 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~~ after 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, the provision of the certificate of incorporation requiring such

greater vote shall not be altered, amended, or repealed except by such greater vote.

SECTION 6. 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 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~~ the member's corporation, at ~~his~~ the member's 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~~ the member's 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 7. REPEALER 18 O.S. 1991, Section 1003, is hereby repealed.

SECTION 8. This act shall become effective November 1, 1996.

Passed the Senate the 12th day of March, 1996.

President of the Senate

Passed the House of Representatives the ____ day of
_____, 1996.

Speaker of the House of
Representatives