

STATE OF OKLAHOMA

2nd Session of the 45th Legislature (1996)

HOUSE BILL NO. 2733

By: Toure

AS INTRODUCED

An Act relating to the Oklahoma General Corporation Act; amending 18 O.S. 1991, Sections 1006, as amended by Section 1, Chapter 99, O.S.L. 1992, 1026, 1031, 1032, 1077, 1084, 1091, 1100.1, 1100.2 and 1142, as last amended by Section 1, Chapter 267, O.S.L. 1994 (18 O.S. Supp. 1995, Sections 1006 and 1142), which relate to corporations; modifying required content of certificate of incorporation; modifying procedures with respect to resignation of registered agents; modifying procedures with respect to indemnification; conferring jurisdiction on district courts for determination of certain actions; defining term; modifying procedures governing amendments to certificates of incorporation; defining terms; modifying terms with respect to appraisal rights; modifying procedures upon dissolution of corporations; providing for bar of certain claims; prescribing procedures with respect to barred claims; providing procedure for determination of security; providing for plans of distribution for certain corporations; authorizing Secretary of State to issue certain documents; authorizing fees; repealing 18 O.S. 1991, Section 1003, which relates to rights, liabilities and

duties under prior statutes; and providing an 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 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, 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. 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.~~

The restriction on affording pecuniary gain to members shall not prevent a not-for-profit corporation (1) 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.

If the certificate of incorporation or the bylaws of a not for profit corporation does 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 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, 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 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 resignation shall not become effective until ~~sixty (60)~~ thirty (30) days after each certificate is filed. There shall be ~~included in the certificate a statement~~ attached to such certificate an affidavit of such registered agent, if an individual, or of ~~the president, a vice-president, or the secretary~~ an authorized officer thereof, if a corporation, stating either (1) that at least thirty (30) days prior to the date of the filing of ~~the~~ said certificate, due notice ~~of the resignation of the registered agent~~ was sent by certified or registered mail to the corporation for which such registered agent was acting, at the principal office thereof outside

~~the~~ this state, if known to ~~the~~ such registered agent or, if not, to the last-known address of the attorney or other individual at whose request ~~the~~ such registered agent was appointed for such corporation ~~and such address shall be specified therein~~ of the resignation of such registered agent or (2) that such 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 this state, if known to such registered agent or, if not, to the last-known address of the attorney or other individual at whose request such registered agent was appointed for such corporation, and such 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 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 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 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 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 action, suit or proceeding if he acted in good faith and in a manner he 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 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 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 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 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 in connection with the defense or settlement of such action or suit if he acted in good faith and in a manner he 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 person shall have been adjudged to be liable to the corporation unless and only to the extent that the court in which such 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 person is fairly and reasonably entitled to indemnity for such 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 shall be indemnified against 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. ~~Such 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 independent legal counsel in a written opinion; or~~

3. by the shareholders Such determination shall be made (1) by a majority vote of the directors who are not parties to such action, suit or proceeding, even though less than a quorum, or (2) if there are no such directors, or if such directors so 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 action, suit or proceeding upon receipt of an undertaking by or on behalf of such director or officer to repay such amount if it shall ultimately be determined that he is not entitled to be indemnified by the corporation as authorized by the provisions of this section. Such 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 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 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 and incurred

by him in any such capacity, or arising out of his status as such, whether or not the corporation would have the power to indemnify him 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 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 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 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 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. 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, 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 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~~ 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, 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 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 7. 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 shares, who continuously holds such 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 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 the words "depository receipt" mean 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 of this title or Section ~~42~~ 1090.2 of this ~~act~~ title.

2. a. No appraisal rights under this section shall be available for the shares of any class or series of stock which, stock, or depository receipts in respect thereof 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
- (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 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 of this title to accept for such stock anything except:

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

b. shares of stock of any other corporation ~~which, or~~ depository receipts in respect thereof, which shares of stock or depository receipts at the effective date of the merger or consolidation will be either listed on a national securities exchange or held of record by more than two thousand shareholders; 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 all of the stock of a subsidiary Oklahoma corporation 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, 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 8. 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, 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 notice. Such notice shall state:

- a. that all such 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 such a claim must be sent;
- c. the date by which such 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 such 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 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 notice, the corporation or successor entity shall mail a copy of such 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 rejection by certified or registered mail return receipt requested to the claimant within ninety (90) days after receipt of such 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. 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.

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 notice. Such 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 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. 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 offer for security, the claimant shall be deemed to have accepted such security as the sole source from which to satisfy his 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.

~~1.~~ 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 such longer period of time as the district court may determine 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 9. 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 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 or make,~~ prior to the expiration of the period described in Section 1099 of this title, adopt a plan of distribution pursuant to which the dissolved corporation or successor entity pays or makes reasonable provision to pay all claims and obligations, including all contingent, conditional or unmatured claims known to the corporation or such successor entity and all claims which are known to the dissolved corporation or such successor entity or shall make such provision as 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 within ten (10) years after the date of dissolution. ~~Such~~ The plan of distribution shall provide that such 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 plan shall provide that 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.

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 10. AMENDATORY 18 O.S. 1991, Section 1142, as last amended by Section 1, Chapter 267, O.S.L. 1994 (18 O.S. Supp. 1995, 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 by him, 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 therefor.

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 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 clerk shall receive a fee of One Dollar (\$1.00). Such 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 11. REPEALER 18 O.S. 1991, Section 1003, is hereby repealed.

SECTION 12. This act shall become effective November 1, 1996.

45-2-8807 MAH