

STATE OF OKLAHOMA

2nd Session of the 46th Legislature (1998)

COMMITTEE SUBSTITUTE  
FOR  
SENATE BILL NO. 1300

By: Hendrick

COMMITTEE SUBSTITUTE

[ Corporations - Oklahoma General Corporation Act -  
Secretary of State - indemnification - redemption of  
stock - voting trust agreement - certificate of  
termination of merger or consolidation - business  
combinations -

effective date ]

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

SECTION 1. AMENDATORY 18 O.S. 1991, Section 1007, is  
amended to read as follows:

Section 1007.

EXECUTION, ACKNOWLEDGMENT, FILING AND EFFECTIVE

DATE OF ORIGINAL CERTIFICATE OF INCORPORATION

AND OTHER INSTRUMENTS; EXCEPTIONS

A. Whenever any provision of the Oklahoma General Corporation  
Act requires any instrument to be filed in accordance with the  
provisions of this section or with the provisions of the Oklahoma  
General Corporation Act, ~~such~~ the instrument shall be executed as  
follows:

1. The certificate of incorporation and any other instrument to  
be filed before the election of the initial board of directors, if

the initial directors were not named in the certificate of incorporation, shall be ~~signed~~ executed by the incorporator or incorporators;

2. All other instruments shall be ~~signed~~ executed

- a. by the ~~chairman~~ chair or ~~vice-chairman~~ vice-chair of the board of directors, or by the president, or by a vice-president, and attested by the secretary or an assistant secretary; or by ~~such~~ officers as may be duly authorized to exercise the duties, respectively, ordinarily exercised by the president or vice-president and by the secretary or assistant secretary of a corporation;
- b. if it appears from the instrument that there are no such officers, then by a majority of the directors or by ~~such~~ those directors ~~as may be~~ designated by the board;
- c. if it appears from the instrument that there are no such officers or directors, then by the holders of record, or ~~such~~ those of them as may be designated by the holders of record, of a majority of all outstanding shares of stock; or
- d. by the holders of record of all outstanding shares of stock.

B. Whenever any provision of the Oklahoma General Corporation Act requires any instrument to be acknowledged, ~~such that~~ that requirement is satisfied by either:

1. The formal acknowledgment by the person or one of the persons signing the instrument that it is his or her act and deed or the act and deed of the corporation, as the case may be, and that the facts stated therein are true. ~~Such~~ The acknowledgment shall be made before a person who is authorized by the law of the place of

execution to take acknowledgments of deeds and who, ~~if he has~~ shall  
affix a seal of office, ~~shall affix it~~ if any, to the instrument; or

2. The signature, without more, of the person or persons signing the instrument, in which case ~~such~~ the signature or signatures shall constitute the affirmation or acknowledgment of the signatory, under ~~penalties~~ penalty of perjury, that the instrument is his or her act and deed or the act and deed of the corporation, as the case may be, and that the facts stated therein are true.

C. Whenever any provision of the Oklahoma General Corporation Act requires any instrument to be filed in accordance with the provisions of this section or with the provisions of the Oklahoma General Corporation Act, ~~such~~ the requirement means that:

1. Two signed instruments, one of which may be a conformed copy, shall be delivered to the Office of the Secretary of State;

2. All ~~corporate~~ delinquent franchise taxes authorized by law to be collected by the Oklahoma Tax Commission shall be tendered to the Oklahoma Tax Commission as prescribed by Sections 1201 through 1214 of Title 68 of the Oklahoma Statutes;

3. All fees authorized by law to be collected by the Secretary of State in connection with the filing of the instrument shall be tendered to the Secretary of State; and

4. Upon delivery of the instrument, and upon tender of the required taxes and fees, the Secretary of State shall certify that the instrument has been filed in ~~his~~ the Secretary of State's office by endorsing upon the signed instrument the word "Filed", and the date of its filing. This endorsement is the "filing date" of the instrument, and is conclusive of the date of its filing in the absence of actual fraud. Upon request, the Secretary of State shall also endorse the hour that the instrument was filed, which endorsement shall be conclusive of the hour of its filing in the absence of actual fraud. The Secretary of State shall thereupon file and index the endorsed instrument.

D. Any instrument filed in accordance with the provisions of subsection C of this section shall be effective upon its filing date. Any instrument may provide that it is not to become effective until a specified ~~date~~ time subsequent to the time it is filed, but ~~such that~~ date shall not be later than a time on the ninetieth day after the date of its filing. If any instrument filed in accordance with subsection C of this section provides for a future effective date or time and if the transaction is terminated or its terms are amended to change the future effective date or time prior to the future effective date or time, the instrument shall be terminated or amended by the filing, prior to the future effective date or time set forth in the instrument, of a certificate of termination or amendment of the original instrument, executed in accordance with subsection A of this section, which shall identify the instrument which has been terminated or amended and shall state that the instrument has been terminated or the manner in which it has been amended.

E. If another section of the Oklahoma General Corporation Act specifically prescribes a manner of executing, acknowledging, or filing a specified instrument or a time when ~~such an~~ instrument shall become effective which differs from the corresponding provisions of this section, then the provisions of ~~such the~~ other section shall govern.

F. Whenever any instrument authorized to be filed with the Secretary of State under any provision of Title 18 of the Oklahoma Statutes has been so filed and is an inaccurate record of the corporate action therein referred to, or was defectively or erroneously executed, sealed, or acknowledged, ~~such the~~ instrument may be corrected by filing with the Secretary of State a certificate of correction of ~~such the~~ instrument which shall be executed, acknowledged and filed in accordance with the provisions of this section. The certificate of correction shall specify the inaccuracy

or defect to be corrected and shall set forth the portion of the instrument in corrected form. The corrected instrument shall be effective as of the date the original instrument was filed, except as to those persons who are substantially and adversely affected by the correction and as to those persons the corrected instrument shall be effective from the filing date of the corrected instrument.

G. If any instrument authorized to be filed with the Secretary of State pursuant to any provision of this title is filed inaccurately, ~~or~~ or defectively, ~~or is~~ erroneously executed, sealed, ~~or~~ acknowledged, or is otherwise defective in any respect, the Secretary of State shall have no liability to any person for the preclearance for filing, the acceptance for filing, or the filing and indexing of such instrument ~~by the filing and indexing of such instrument by the Secretary of State.~~

H. ~~Any~~ When authorized by the rules of the Secretary of State, any signature on any instrument authorized to be filed with the Secretary of State under any ~~provisions~~ provision of this title may be a facsimile signature, a conformed signature, or an electronically transmitted signature.

SECTION 2. AMENDATORY 18 O.S. 1991, Section 1022, is amended to read as follows:

Section 1022.

REGISTERED AGENT IN STATE; RESIDENT AGENT

A. Every domestic corporation shall have and maintain in this state a registered agent, which agent may be either ~~an~~ an:

1. The domestic corporation itself;

2. An individual resident in the of this state whose business office is identical with the corporation's registered office, or a domestic corporation, which may be itself,; ~~or a foreign corporation authorized to transact business in this state, having~~

3. A domestic or qualified foreign corporation, limited liability company, or limited partnership. Each registered agent

shall maintain a business office identical with such registered the office of the registered agent which is open during regular business hours to accept service of process and otherwise perform the functions of a registered agent.

B. ~~Every~~ With respect to a foreign corporation ~~qualified to transact~~ transacting business in this state shall have and maintain the Secretary of State as its registered agent in this state. In addition, ~~such foreign corporation may have and maintain in this state a registered agent, which agent may be either an individual resident of the state whose business office is identical with the corporation's registered office, or a domestic corporation, or a foreign corporation authorized to transact business in this state, having a business office identical with such registered office; provided that if such additional registered agent is designated, service of process shall be on such agent and not on the Secretary of State~~ which has not designated a registered agent, service of process against the corporation shall be on the Secretary of State.

C. Whenever the term "resident agent" or "resident agent in charge of a corporation's principal office or place of business in this state", or other term of like import which refers to a corporation's agent required by statute to be located in this state, is or has been used in a corporation's certificate of incorporation, or in any other document, or in any statute, it shall be deemed to mean and refer to, unless the context indicates otherwise, the corporation's registered agent required by this section. It shall not be necessary for any corporation to amend its certificate of incorporation or any other document to comply with the provisions of this section.

SECTION 3. 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~~ the appointment of a successor by filing ~~in the name of each affected corporation~~ a certificate of resignation 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 certificate a statement of such registered agent, if an individual, or of the president, a vice-president, or the secretary thereof, if a corporation, 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 registered agent was acting, at the principal office thereof outside the state, if known to the registered agent or, if not, to the last-known address of the attorney or other individual at whose request the registered agent was appointed for such corporation and such address shall be specified therein~~ The certificate shall:

1. Be acknowledged by the registered agent;

2. Contain a statement that written notice of resignation was given to the corporation at least thirty (30) days prior to the filing of the certificate by mailing or delivering the notice to the corporation at its address last known to the registered agent; and

3. Set forth the date the notice was mailed.

B. 1. 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~~ may 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 a change of registered agent.

2. If ~~such corporation, being a corporation of this state, a~~ domestic corporation 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 declare the charter of the corporation forfeited.~~

3. If a foreign corporation fails to obtain and designate a new registered agent prior to the expiration of the period of thirty (30) days after the filing by the registered agent of the certificate of resignation, the Secretary of State shall forfeit the foreign corporation's authority to do business in this state.

C. After the resignation of a registered agent has become effective, if no new registered agent has been obtained and designated in the time and manner required, service of legal process against the corporation for which the resigned registered agent had been acting shall be upon the Secretary of State.

SECTION 4. AMENDATORY 18 O.S. 1991, Section 1027, is amended to read as follows:

Section 1027.

BOARD OF DIRECTORS; POWERS; NUMBER; QUALIFICATIONS; TERMS AND QUORUM; COMMITTEES; CLASSES OF DIRECTORS; NOT FOR PROFIT CORPORATIONS; RELIANCE UPON BOOKS; ACTION WITHOUT MEETING; ETC.

A. The business and affairs of every corporation organized in accordance with the provisions of the Oklahoma General Corporation Act shall be managed by or under the direction of a board of directors, except as may be otherwise provided for in the Oklahoma

General Corporation Act or in ~~its~~ the corporation's certificate of incorporation. If any ~~such~~ provision is made in the certificate of incorporation, the powers and duties conferred or imposed upon the board of directors by the provisions of the Oklahoma General Corporation Act shall be exercised or performed to ~~such~~ the extent and by ~~such~~ the person or persons ~~as shall be provided~~ stated in the certificate of incorporation.

B. The board of directors of a corporation shall consist of one or more members. The number of directors shall be fixed by or in the manner provided for in the bylaws, unless the certificate of incorporation fixes the number of directors, in which case a change in the number of directors shall be made only by amendment of the certificate. Directors need not be shareholders unless so required by the certificate of incorporation or the bylaws. The certificate of incorporation or bylaws may prescribe other qualifications for directors. Each director shall hold office until ~~his~~ a successor is elected and qualified or until his or her earlier resignation or removal. Any director may resign at any time upon written notice to the corporation. A majority of the total number of directors shall constitute a quorum for the transaction of business unless the certificate of incorporation or the bylaws require a greater number. ~~Unless~~ Except as provided in subsection G of this section, neither the certificate of incorporation ~~provides otherwise,~~ nor the bylaws may provide that ~~a number less than a majority shall constitute a quorum which in no case shall~~ may be less than one-third (1/3) of the total number of directors ~~except that when a board of one director is authorized under the provisions of this section, then one director shall constitute a quorum.~~ The vote of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors unless the certificate of incorporation or the bylaws shall require a vote of a greater number.

C. The board of directors, ~~by resolution passed by a majority of the whole board,~~ may designate one or more committees, ~~each committee to consist~~ consisting of one or more of the directors of the corporation. The board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. The bylaws may provide that in the absence or disqualification of a member of a committee, the member or members ~~thereof~~ present at ~~any~~ a meeting and not disqualified from voting, whether or not ~~he or they~~ the member or members constitute a quorum, may unanimously appoint another member of the board of directors to act at the meeting in the place of any ~~such~~ absent or disqualified member. Any ~~such~~ committee, to the extent provided in the resolution of the board of directors, or in the bylaws of the corporation, shall have and may exercise all the powers and authority of the board of directors in the management of the business and affairs of the corporation, and may authorize the seal of the corporation to be affixed to all papers which may require it; but no ~~such~~ committee shall have the power or authority ~~in reference to amending the certificate of incorporation (except that a committee, to the extent authorized in the resolution or resolutions providing for the issuance of shares of stock adopted by the board of directors as provided for in subsection A of Section 1032 of this title, may fix the designations and any of the preferences or rights of such shares relating to dividends, redemption, dissolution, any distribution of assets of the corporation or the conversion into, or the exchange of such shares for, 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 or fix the number of shares of any series of stock or authorize the increase or decrease of the shares of any series),~~ adopting an agreement of merger or consolidation in accordance with the provisions of Sections 1081 or 1082 of this title, recommending

~~to the shareholders the sale, lease or exchange of all or substantially all of the corporation's property and assets, recommending to the shareholders a dissolution of the corporation or a revocation of a dissolution, or amending the bylaws of the corporation; and, unless the resolution, bylaws or certificate of incorporation expressly so provide, no such committee shall have the power or authority to declare a dividend, authorize the issuance of stock, or to adopt a certificate of ownership and merger pursuant to the provisions of Section 1083 of this title:~~

1. Approve, adopt, or recommend to the shareholders any action or matter expressly required by the Oklahoma General Corporation Act to be submitted to shareholders for approval; or

2. Adopt, amend, or repeal any bylaw of the corporation.

D. The directors of any corporation organized in accordance with the provisions of the Oklahoma General Corporation Act, by the certificate of incorporation or by an initial bylaw, or by a bylaw adopted by a vote of the shareholders, may be divided into one, two, or three classes; the term of office of those of the first class to expire at the annual meeting next ensuing; of the second class one (1) year thereafter; of the third class two (2) years thereafter; and at each annual election held after ~~such~~ classification and election, directors shall be chosen for a full term, as the case may be, to succeed those whose terms expire. The certificate of incorporation may confer upon holders of any class or series of stock the right to elect one or more directors who shall serve for ~~such~~ the term, and have ~~such~~ voting powers as shall be stated in the certificate of incorporation. The terms of office and voting powers of the directors elected in the manner so provided in the certificate of incorporation may be greater than or less than those of any other director or class of directors. If the certificate of incorporation provides that directors elected by the holders of a class or series of stock shall have more or less than one vote per

director on any matter, every reference in the Oklahoma General Corporation Act to a majority or other proportion of directors shall refer to a majority or other proportion of the votes of ~~such~~ the directors.

E. A member of the board of directors, or a member of any committee designated by the board of directors, in the performance of ~~his~~ the member's duties, shall be fully protected in relying in good faith upon the records of the corporation and upon ~~such~~ information, opinions, reports, or statements presented to the corporation by any of the corporation's officers or employees, or committees of the board of directors, or by any other person as to matters the member reasonably believes are within ~~such~~ the officer's, employee's, committee's or other person's competence and who have been selected with reasonable care by or on behalf of the corporation.

F. Unless otherwise restricted by the certificate of incorporation or bylaws:

1. Any action required or permitted to be taken at any meeting of the board of directors, or of any committee thereof may be taken without a meeting if all members of the board or committee, as the case may be, consent thereto in writing, and the writing or writings are filed with the minutes of proceedings of the board or committee;

2. The board of directors of any corporation organized in accordance with the provisions of the Oklahoma General Corporation Act may hold its meetings, and have an office or offices, outside of this state;

3. The board of directors shall have the authority to fix the compensation of directors; and

4. Members of the board of directors of any corporation, or any committee designated by ~~such~~ the board, may participate in a meeting of ~~such~~ the board or committee by means of conference telephone or similar communications equipment by means of which all persons

participating in the meeting can hear or otherwise communicate with each other, ~~and participation.~~ Participation in a meeting pursuant to the provisions of this subsection shall constitute presence in person at ~~such~~ the meeting.

G. 1. The certificate of incorporation of any corporation organized in accordance with the provisions of the Oklahoma General Corporation Act which is not authorized to issue capital stock may provide that less than one-third (1/3) of the members of the governing body may constitute a quorum thereof and may otherwise provide that the business and affairs of the corporation shall be managed in a manner different from that provided for in this section.

2. Except as may be otherwise provided by the certificate of incorporation, the provisions of this section shall apply to such a corporation, and when so applied, all references to the board of directors, to members thereof, and to shareholders shall be deemed to refer to the governing body of the corporation, the members thereof and the members of the corporation, respectively.

H. 1. Any director or the entire board of directors may be removed, with or without cause, by the holders of a majority of the shares then entitled to vote at an election of directors, except as follows:

- a. unless the certificate of incorporation otherwise provides, in the case of a corporation whose board is classified as provided for in subsection D of this section, shareholders may effect such removal only for cause ~~or~~ or
- b. in the case of a corporation having cumulative voting, if less than the entire board is to be removed, no director may be removed without cause if the votes cast against ~~his~~ the director's removal would be sufficient to elect ~~him~~ the director if then

cumulatively voted at an election of the entire board of directors, or, if there are classes of directors, at an election of the class of directors of which ~~he~~ the director is a part.

2. Whenever the holders of any class or series are entitled to elect one or more directors by the provisions of the certificate of incorporation, the provisions of this subsection shall apply, in respect to the removal without cause of a director or directors so elected, to the vote of the holders of the outstanding shares of that class or series and not to the vote of the outstanding shares as a whole.

SECTION 5. 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~~ 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 an~~ an 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~~ expenses which the court shall deem proper.

C. To the extent that a present or former director, or 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~~ the person shall be indemnified against expenses, including attorneys' fees, actually and reasonably incurred by ~~him~~ the 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 present or former director, or officer, ~~employee or agent~~ is proper in the circumstances because ~~he~~ the person has met the applicable standard of conduct set forth in subsection A or B of this section. ~~Such~~ This determination shall be made, with respect to a person who is a director or officer at the time of the determination:

1. ~~by the board of directors by~~ 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~~ By a committee of directors designated by a majority vote of directors, even though less than a quorum;

3. If there are no such directors, or if such directors so ~~directs~~ direct, by independent legal counsel in a written opinion;  
or

~~3. by~~ 4. 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 person is not entitled to be indemnified by the corporation as authorized by the provisions of this section. ~~Such expenses~~ Expenses incurred by former directors or officers or other employees and agents may be ~~so~~ paid upon ~~such~~ the terms and conditions, if any, as the ~~board of directors~~ corporation 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~~ the person's official capacity and as to action in another capacity while holding ~~such~~ an office.

G. A corporation shall have power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee, or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise against any liability asserted against ~~him~~ the

person and incurred by ~~him~~ the person in any such capacity, or arising out of ~~his~~ the person's status as such, whether or not the corporation would have the power to indemnify ~~him~~ the person against ~~such~~ liability under the provisions of this section.

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

I. For purposes of this section, references to "other enterprises" shall include, but are not limited to, employee benefit plans; references to "fines" shall include, but are not limited to, 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, but are not limited to, any service as a director, officer, employee, or agent of the corporation which imposes duties on, or involves services, by ~~such~~ the director, officer, employee, or agent with respect to an employee benefit plan, its participants, or beneficiaries; and a person who acted in good faith and in a manner ~~he~~ the person reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner "not opposed

to the best interests of the corporation" as referred to in this section.

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

K. The district court is 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 6. 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~~ the 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~~ the 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~~ the facts shall operate upon the voting powers, designations, preferences, rights, and qualifications, limitations, or restrictions of ~~such~~ the 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~~ the 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.~~ The stock of any class or series may be made subject to redemption by the corporation at its option or at the option of the holders of the stock or upon the happening of a specified event; provided, however, that at the time of redemption, the corporation shall have outstanding shares of at least one class or series of stock with full voting powers which shall not be subject to redemption. Notwithstanding the limitation stated in the foregoing proviso:

1. 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~~ made subject to redemption by the corporation at its option or at the option of the holders of the stock.

2. Any stock of a corporation which ~~has~~ directly or indirectly holds 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~~ the 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~~ any adjustments, as shall be stated in the certificate of incorporation or in the resolution or resolutions providing for the issue of ~~such~~ the 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~~ the 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~~ the 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~~ the 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~~ the 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~~ the price or prices or at ~~such~~ the 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~~ the 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~~ the 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~~ the 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~~ the 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~~ the 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~~ the resolution or resolutions and the number of shares of stock of ~~such~~ the 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~~ the 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~~ the 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~~ the class or series are outstanding, and that none will be issued subject to the certificate of designations previously filed with respect to ~~such~~ the class or series, may be executed, acknowledged, and filed in accordance with the provisions of Section 1007 of this title and, when ~~such~~ the 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~~ the 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~~ the 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 7. AMENDATORY 18 O.S. 1991, Section 1041, is amended to read as follows:

Section 1041.

CORPORATION'S POWERS RESPECTING OWNERSHIP, VOTING, ETC. OF ITS OWN STOCK; RIGHTS OF STOCK CALLED FOR REDEMPTION

A. Every corporation may purchase, redeem, receive, take, or otherwise acquire, own ~~and~~, hold, sell, lend, exchange, transfer, or otherwise dispose of, pledge, use and otherwise deal in and with its own shares; provided, however, that no corporation shall:

1. Purchase or redeem its own shares of capital stock for cash or other property when the capital of the corporation is impaired or when ~~such~~ the purchase or redemption would cause any impairment of the capital of the corporation, except that a corporation may

purchase or redeem out of capital any of its own shares which are entitled upon any distribution of its assets, whether by dividend or in liquidation, to a preference over another class or series of its stock, or, if no shares entitled to a preference are outstanding, any of its own shares if such shares will be retired upon their acquisition and the capital of the corporation reduced in accordance with the provisions of Sections ~~78 and 79 of this act~~ 1078 and 1079 of this title. Nothing in this subsection shall invalidate or otherwise affect a note, debenture, or other obligation of a corporation given by it as consideration for its acquisition by purchase, redemption, or the exchange of its shares of stock if at the time such note, debenture, or obligation was delivered by the corporation its capital was not then impaired or did not thereby become impaired; ~~or~~

2. Purchase, for more than the price at which they may then be redeemed, any of its shares which are redeemable at the option of the corporation; or

3. Redeem any of its shares unless their redemption is authorized by subsection B of Section ~~32 of this act~~ 1032 of this title and then only in accordance with the provisions of ~~such~~ that section and the certificate of incorporation.

B. Nothing in this section shall be construed to limit or affect a corporation's right to resell any of its shares theretofore purchased or redeemed out of surplus and which have not been retired, for ~~such~~ consideration ~~as shall be~~ fixed by the board of directors or by the shareholders if the certificate of incorporation so provides.

C. Shares of its own capital stock belonging to the corporation or to another corporation, if a majority of the shares entitled to vote in the election of directors of ~~such~~ the other corporation is held, directly or indirectly, by the corporation, shall neither be entitled to vote nor be counted for quorum purposes. Nothing in

this section shall be construed as limiting the right of any corporation to vote stock, including, l but not limited to, l its own stock, held by it in a fiduciary capacity.

D. Shares which have been called for redemption shall not be deemed to be outstanding shares for the purpose of voting or determining the total number of shares entitled to vote on any matter on and after the date on which written notice of redemption has been sent to holders thereof and a sum sufficient to redeem ~~such~~ those shares has been irrevocably deposited or set aside to pay the redemption price to the holders of the shares upon surrender of the certificates ~~therefor~~.

SECTION 8. AMENDATORY 18 O.S. 1991, Section 1049, is amended to read as follows:

Section 1049.

DIVIDENDS; PAYMENT; WASTING ASSET CORPORATIONS

A. The directors of every corporation, subject to any restrictions contained in its certificate of incorporation, may declare and pay dividends upon the shares of its capital stock either out of its surplus, as defined in and computed in accordance with the provisions of Sections ~~35 and 79 of this act~~ 1035 and 1079 of this title, or in case there ~~shall be no such~~ is no surplus, out of its net profits for the fiscal year in which the dividend is declared ~~and/or~~ the preceding fiscal year. If the capital of the corporation, computed in accordance with the provisions of Sections ~~35 and 79 of this act~~ 1035 and 1079 of this title, shall have been diminished by depreciation in the value of its property, or by losses, or otherwise, to an amount less than the aggregate amount of the capital represented by the issued and outstanding stock of all classes having a preference upon the distribution of assets, the directors of ~~such~~ the corporation shall not declare and pay out of ~~such~~ the net profits any dividends upon any shares of any classes of its capital stock until the deficiency in the amount of capital

represented by the issued and outstanding stock of all classes having a preference upon the distribution of assets shall have been repaired. Nothing in this subsection shall invalidate or otherwise affect a note, debenture, or other obligation of the corporation paid by it as a dividend on shares of its stock, or any payment made thereon, if at the time the note, debenture, or obligation was delivered by the corporation, the corporation had either surplus or net profits as provided in this subsection from which the dividend could lawfully have been paid.

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

SECTION 9. AMENDATORY 18 O.S. 1991, Section 1056, is amended to read as follows:

Section 1056.

#### MEETINGS OF SHAREHOLDERS

A. Meetings of shareholders may be held at such place, either within or without this state, as may be designated by or in the manner provided for in the bylaws or, if not so designated, at the registered office of the corporation in this state.

B. ~~An~~ 1. Unless directors are elected by written consent in lieu of an annual meeting as permitted by this subsection, an annual meeting of shareholders shall be held for the election of directors on a date and at a time designated by or in the manner provided for in the bylaws. Shareholders may, unless the certificate of

incorporation otherwise provides, act by written consent to elect directors; provided, however, that if the consent is less than unanimous, the action by written consent may be in lieu of holding an annual meeting only if all of the directorships to which directors could be elected at an annual meeting held at the effective time of the action are vacant and are filled by the action.

2. Any other proper business may be transacted at the annual meeting.

C. A failure to hold the annual meeting at the designated time or to elect a sufficient number of directors to conduct the business of the corporation shall not affect otherwise valid corporate acts or work a forfeiture or dissolution of the corporation except as may be otherwise specifically provided for in the Oklahoma General Corporation Act. If the annual meeting for election of directors is not held on the date designated therefor or action by written consent to elect directors in lieu of an annual meeting has not been taken, the directors shall cause the meeting to be held as soon ~~thereafter~~ as is convenient. If there be a failure to hold the annual meeting or action by written consent to elect directors in lieu of an annual meeting for a period of thirty (30) days after the date designated ~~therefor~~ for the annual meeting, or if no date has been designated, for a period of thirteen (13) months after the latest to occur of the organization of the corporation, ~~or after~~ its last annual meeting, or the last action by written consent to elect directors in lieu of an annual meeting, the district court may summarily order a meeting to be held upon the application of any shareholder or director. The shares of stock represented at ~~such~~ the meeting, either in person or by proxy, and entitled to vote thereat, shall constitute a quorum for the purpose of ~~such~~ the meeting, notwithstanding any provision of the certificate of incorporation or bylaws to the contrary. The district court may

issue ~~such~~ orders as may be appropriate, including, without limitation, orders designating the time and place of ~~such~~ the meeting, the record date for determination of shareholders entitled to vote, and the form of notice of ~~such~~ the meeting.

D. Special meetings of the shareholders may be called by the board of directors or by ~~such~~ the person or persons as may be authorized by the certificate of incorporation or by the bylaws.

E. All elections of directors shall be by written ballot, unless otherwise provided for in the certificate of incorporation.

SECTION 10. AMENDATORY 18 O.S. 1991, Section 1057, is amended to read as follows:

Section 1057.

VOTING RIGHTS OF SHAREHOLDERS; PROXIES; LIMITATIONS

A. Unless otherwise provided for in the certificate of incorporation and subject to the provisions of Section ~~58 of this act~~ 1058 of this title, each shareholder shall be entitled to one vote for each share of capital stock held by ~~such~~ the shareholder. If the certificate of incorporation provides for more or less than one vote for any share on any matter, every reference in the Oklahoma General Corporation Act to a majority or other proportion of stock shall refer to such majority or other proportion of the votes of such stock.

B. Each shareholder entitled to vote at a meeting of shareholders or to express consent or dissent to corporate action in writing without a meeting may authorize another person or persons to act for ~~him~~ the shareholder by proxy, but no ~~such~~ proxy shall be voted or acted upon after three (3) years from its date, unless the proxy provides for a longer period.

C. Without limiting the manner in which a shareholder may authorize another person or persons to act as a proxy pursuant to subsection B of this section, the following shall constitute a valid means by which a shareholder may grant such authority:

1. A shareholder may execute a writing authorizing another person or persons to act for him or her as proxy. Execution may be accomplished by the shareholder or the shareholder's authorized officer, director, employee, or agent signing the writing or causing his or her signature to be affixed to the writing by any reasonable means including, but not limited to, by facsimile signature.

2. A shareholder may authorize another person or persons to act for him or her as proxy by transmitting or authorizing the transmission of a telegram, cablegram, or other means of electronic transmission to the person who will be the holder of the proxy or to a proxy solicitation firm, proxy support service organization, or like agent duly authorized by the person who will be the holder of the proxy to receive the transmission; provided, that any telegram, cablegram, or other means of electronic transmission must either set forth, or be submitted with information from which it can be determined, that the telegram, cablegram, or other electronic transmission was authorized by the shareholder. If it is determined that telegrams, cablegrams, or other electronic transmissions are valid, the inspectors or, if there are no inspectors, any other person making that determination shall specify the information upon which they relied.

D. Any copy, facsimile telecommunication, or other reliable reproduction of the writing or transmission created pursuant to subsection C of this section may be substituted or used in lieu of the original writing or transmission for any and all purposes for which the original writing or transmission could be used; provided, that the copy, facsimile telecommunication, or other reproduction shall be a complete reproduction of the entire original writing or transmission.

E. A duly executed proxy shall be irrevocable if it states that it is irrevocable and if, and only as long as, it is coupled with an interest sufficient in law to support an irrevocable power. A proxy

may be made irrevocable regardless of whether the interest with which it is coupled is an interest in the stock itself or an interest in the corporation generally.

SECTION 11. AMENDATORY 18 O.S. 1991, Section 1063, is amended to read as follows:

Section 1063.

#### VOTING TRUSTS AND OTHER VOTING AGREEMENTS

A. One (1) or more shareholders, by agreement in writing, may deposit capital stock of an original issue with or transfer capital stock to any person or persons, or corporation or corporations, authorized to act as trustee, for the purpose of vesting in ~~such~~ the person or persons, corporation or corporations, who may be designated voting trustee, or voting trustees, the right to vote thereon for any period of time determined by ~~such~~ the agreement, ~~not exceeding ten (10) years,~~ upon the terms and conditions stated in ~~such~~ the agreement. The agreement may contain any other lawful provisions not inconsistent with ~~such~~ its purpose. After the filing of a copy of the agreement in the registered office of the corporation in this state, which copy shall be open to the inspection of any shareholder of the corporation or any beneficiary of the trust under the agreement daily during business hours, certificates of stock or uncertificated stock shall be issued to the voting trustee or trustees to represent any stock of an original issue so deposited with ~~him or them~~ the trustee or trustees, and any certificates of stock or uncertificated stock so transferred to the voting trustee or trustees shall be surrendered and canceled and new certificates or uncertificated stock shall be issued therefor to the voting trustee or trustees. In the certificate so issued, if any, it shall be stated that it is issued pursuant to ~~such~~ the agreement, and that fact shall also be stated in the stock ledger of the corporation. The voting trustee or trustees may vote the stock so issued or transferred during the period specified in the agreement.

Stock standing in the name of the voting trustee or trustees may be voted either in person or by proxy, ~~and in.~~ In voting the stock, the voting trustee or trustees shall incur no responsibility as shareholder, trustee, or otherwise, except for ~~his or their~~ the trustee's or trustees' own individual malfeasance. In any case where two (2) or more persons are designated as voting trustees, and the right and method of voting any stock standing in their names at any meeting of the corporation are not fixed by the agreement appointing the trustees, the right to vote the stock and the manner of voting it at the meeting shall be determined by a majority of the trustees, or if they be equally divided ~~as to~~ or the right and manner of voting the stock in any particular case, the vote of the stock ~~in such case~~ shall be divided equally among the trustees.

B. ~~The trustee or trustees shall execute and deliver to the beneficiary or beneficiaries voting trust certificates. Such voting trust certificates shall be transferable in the same manner as certificates of stock under the provisions of this act~~ Any amendment to a voting trust agreement shall be made by a written agreement, a copy of which shall be filed in the registered office of the corporation in this state.

C. ~~At any time within two (2) years prior to the time of expiration of any voting trust agreement as originally fixed or as last extended as provided for in this subsection, one or more beneficiaries of the trust under the voting trust agreement, by written agreement and with the written consent of the voting trustee or trustees, may extend the duration of the voting trust agreement for an additional period not exceeding ten (10) years from the expiration date of the trust as originally fixed or as last extended, as provided for in this subsection. The voting trustee or trustees, prior to the time of expiration of any such voting trust agreement, as originally fixed or as previously extended, as the case may be, shall file in the registered office of the corporation~~

~~in this state a copy of such extension agreement and of his or their consent thereto, and thereupon the duration of the voting trust agreement shall be extended for the period fixed in the extension agreement; but no such extension agreement shall affect the rights or obligations of persons not parties thereto.~~

~~D. An agreement between two (2) or more shareholders, if in writing and signed by the parties thereto, may provide that in exercising any voting rights, the shares held by them shall be voted as provided by the agreement, or as the parties may agree, or as determined in accordance with a procedure agreed upon by them. No such agreement shall be effective for a term of more than ten (10) years, but, at any time within two (2) years prior to the time of the expiration of such agreement, the parties may extend its duration for as many additional periods, each not to exceed ten (10) years, as they may desire.~~

~~E. The validity of any such voting trust or other voting agreement, otherwise lawful, shall not be affected during a period of ten (10) years from the date when it was created or last extended by the fact that under its terms it will or may last beyond such ten-year period.~~

~~F. D.~~ This section shall not be construed to invalidate any voting or other agreement among shareholders or any irrevocable proxy which is not otherwise illegal.

SECTION 12. AMENDATORY 18 O.S. 1991, Section 1065, is amended to read as follows:

Section 1065.

#### INSPECTION OF BOOKS AND RECORDS

A. As used in this section, "shareholder":

1. "Shareholder" means:

- a. a shareholder of record in a stock corporation, and
- b. a member of a nonstock corporation as reflected on the records of the nonstock corporation; and

2. "List of shareholders" includes a list of members in a nonstock corporation.

B. Any shareholder, in person or by attorney or other agent, upon written demand under oath stating the purpose thereof, shall have the right during the usual hours for business to inspect for any proper purpose the corporation's stock ledger, a list of its shareholders, and its other books and records, and to make copies or extracts therefrom. A proper purpose shall mean a purpose reasonably related to ~~such~~ a person's interest as a shareholder. In every instance where an attorney or other agent shall be the person who seeks the right to inspection, the demand under oath shall be accompanied by a power of attorney or ~~such~~ other writing which authorizes the attorney or other agent to so act on behalf of the shareholder. The demand under oath shall be directed to the corporation at its registered office in this state or at its principal place of business.

C. 1. If the corporation or an officer or agent thereof refuses to permit an inspection sought by a shareholder or attorney or other agent acting for the shareholder pursuant to the provisions of subsection B of this section or does not reply to the demand within five (5) business days after the demand has been made, the shareholder may apply to the district court for an order to compel ~~such~~ an inspection. The court may summarily order the corporation to permit the shareholder to inspect the corporation's stock ledger, an existing list of shareholders, and its other books and records, and to make copies or extracts therefrom; or the court may order the corporation to furnish to the shareholder a list of its shareholders as of a specific date on condition that the shareholder first pay to the corporation the reasonable cost of obtaining and furnishing ~~such~~ the list and on ~~such~~ other conditions as the court deems appropriate.

2. Where the shareholder seeks to inspect the corporation's books and records, other than its stock ledger or list of shareholders, ~~he~~ the shareholder shall first establish that:

- a. ~~he~~ the shareholder has complied with the provisions of this section respecting the form and manner of making demand for inspection of ~~such~~ the documents, and
- b. the inspection ~~he~~ the shareholder seeks is for a proper purpose.

3. Where the shareholder seeks to inspect the corporation's stock ledger or list of shareholders and ~~he~~ has complied with the provisions of this section respecting the form and manner of making demand for inspection of ~~such~~ the documents, the burden of proof shall be upon the corporation to establish that the inspection ~~he~~ the shareholder seeks is for an improper purpose. The court may, in its discretion, prescribe any limitations or conditions ~~with reference to~~ upon the inspection, or award ~~such~~ other or further relief as the court may deem just and proper. The court may order books, documents, and records, pertinent extracts therefrom, or duly authenticated copies thereof, to be brought within this state and kept in this state upon such terms and conditions as the order may prescribe.

D. Any director, including a member of the governing body of a nonstock corporation, shall have the right to examine the corporation's stock ledger, a list of its shareholders, and its other books and records for a purpose reasonably related to his or her position as a director. The district court may summarily order the corporation to permit the director to inspect any and all books and records, the stock ledger, and the ~~stock~~ list of shareholders and to make copies or extracts therefrom. The court, in its discretion, may prescribe any limitations or conditions with reference to the inspection, or award ~~such~~ other ~~and~~ or further relief as the court may deem just and proper.

SECTION 13. AMENDATORY 18 O.S. 1991, Section 1073, is amended to read as follows:

Section 1073.

CONSENT OF SHAREHOLDERS IN LIEU OF MEETING

A. Except as provided in subsection B of this section or unless otherwise provided for in the certificate of incorporation, any action required by the provisions of the Oklahoma General Corporation Act to be taken at any annual or special meeting of shareholders of a corporation or any action which may be taken at any annual or special meeting of ~~such~~ shareholders, may be taken without a meeting, without prior notice, and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take ~~such~~ the action at a meeting at which all shares entitled to vote thereon were present and voted and shall be delivered to the corporation by delivery to its registered office in this state, its principal place of business, or an officer or agent of the corporation having custody of the book in which proceedings of meetings of shareholders are recorded. Delivery made to a corporation's registered office shall be by hand or by certified or registered mail, return receipt requested.

B. With respect to a domestic corporation with a class of voting stock listed or traded on a national securities exchange or registered under Section 12(g) of the Securities Exchange Act of 1934, 15 U.S.C. Section 78a et seq., as amended, which has one thousand or more shareholders of record, unless otherwise provided for in the certificate of incorporation, any action required by the provisions of the Oklahoma General Corporation Act to be taken at any annual or special meeting of shareholders of ~~such~~ the corporation or any action which may be taken at any annual or special meeting of ~~such~~ shareholders, may be taken without a

meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action ~~se~~ taken, shall be signed by the holders of all outstanding stock entitled to vote thereon and shall be delivered to the corporation by delivery to its registered office in this state, its principal place of business, or an officer or agent of the corporation having custody of the book in which proceedings of meetings of shareholders are recorded.

Delivery made to a corporation's registered office shall be by hand or by certified or registered mail, return receipt requested. The provisions of this subsection shall be effective with respect to corporate actions by written consent, and to ~~such~~ written consent or consents, as to which the first written consent is executed or solicited after September 1, 1991.

C. Unless otherwise provided for in the certificate of incorporation, any action required by the provisions of the Oklahoma General Corporation Act to be taken at a meeting of the members of a nonstock corporation, or any action which may be taken at any meeting of the members of a nonstock corporation, may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action ~~se~~ taken, shall be signed by members having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all members having a right to vote thereon were present and voted and shall be delivered to the corporation by delivery to its registered office in this state, its principal place of business, or an officer or agent of the corporation having custody of the book in which proceedings of meetings of shareholders are recorded. Delivery made to a corporation's registered office shall be by hand or by certified or registered mail, return receipt requested.

D. Every written consent shall bear the date of signature of each shareholder or member who signs the consent and no written

consent shall be effective to take the corporate action referred to therein unless, within sixty (60) days of the earliest dated consent delivered in the manner required by this section to the corporation, written consents signed by a sufficient number of holders or members to take action are delivered to the corporation by delivery to its registered office in this state, its principal place of business, or an officer or agent of the corporation having custody of the book in which proceedings of meetings of shareholders are recorded.

Delivery made to a corporation's registered office shall be by hand or by certified or registered mail, return receipt requested.

E. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those shareholders or members, as the case may be, who have not consented in writing and who, if the action had been taken at a meeting, would have been entitled to notice of the meeting if the record date for the meeting had been the date that written consents signed by a sufficient number of holders or members to take the action were delivered to the corporation as provided in subsection C of this section. In the event that the action for which ~~is~~ ~~consented to~~ consent is given is ~~such as~~ an action that would have required the filing of a certificate under any other section of this title, ~~if such~~ the action had been voted on by shareholders or by members at a meeting thereof, the certificate filed under ~~such~~ the other section shall state, in lieu of any statement required by ~~such~~ the section concerning any vote of shareholders or members, that written consent has been given in accordance with the provisions of this section, ~~and that written notice has been given as provided for in this section.~~

SECTION 14. AMENDATORY 18 O.S. 1991, Section 1077, as amended by Section 4, Chapter 69, O.S.L. 1996 (18 O.S. Supp. 1997, 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, subdivision, combination, or cancellation of stock or rights of shareholders is to be made, ~~such~~ provisions as may be necessary to effect ~~such~~ the change, exchange, reclassification, subdivision, combination, or cancellation. In particular, and without limitation upon ~~such~~ the 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~~ or by subdividing or combining the outstanding shares of any class or series of a class

of shares into a greater or lesser number of  
outstanding shares,

- 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~~ the amendment or directing that the amendment proposed be considered at the next annual meeting of shareholders. ~~Such~~ The special or annual meeting shall be called and held upon notice in accordance with the provisions of Section 1067 of this title. The notice shall set forth ~~such~~ the 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~~ the 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 1007 of this 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~~ the class, increase or decrease the par value of the shares of ~~such~~ the class, or alter or change the powers, preferences, or special rights of the shares of ~~such~~ the 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~~ the class or classes of stock or which was adopted prior to the issuance of any shares of ~~such~~ the 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~~ the 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~~ the amendment, a certificate thereof shall be executed, acknowledged, and filed and shall become effective in accordance with the provisions of Section 1007 of this title. The certificate of incorporation of any ~~such a~~ 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 the~~ corporation in which event only one meeting of the governing body thereof shall be necessary, and ~~such the~~ proposed amendment shall be submitted to the members or to any specified class of members of ~~such the~~ 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 the~~ amendment shall be executed, acknowledged, and filed and shall become effective in accordance with the provisions of Section 1007 of this title.

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

C. The resolution authorizing a proposed amendment to the certificate of incorporation may provide that at any time prior to the effectiveness of the filing of the amendment with the Secretary of State, notwithstanding authorization of the proposed amendment by the shareholders of the corporation or by the members of a nonstock

corporation, the board of directors or governing body may abandon the proposed amendment without further action by the shareholders or members.

SECTION 15. AMENDATORY 18 O.S. 1991, Section 1081, is amended to read as follows:

Section 1081.

MERGER OR CONSOLIDATION OF DOMESTIC CORPORATIONS

A. Any two or more corporations existing under the laws of this state may merge into a single corporation, which may be any one of the constituent corporations or may consolidate into a new corporation formed by the consolidation, pursuant to an agreement of merger or consolidation, as the case may be, complying and approved in accordance with the provisions of this section.

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

1. ~~the~~ The terms and conditions of the merger or consolidation;
2. ~~the~~ The mode of carrying the same into effect;
3. ~~in~~ In the case of a merger, ~~such~~ the amendments or changes in the certificate of incorporation of the surviving corporation as are desired to be effected by the merger, or, if no ~~such~~ amendments or changes are desired, a statement that the certificate of incorporation of the surviving corporation shall be its certificate of incorporation of the surviving or resulting corporation;
4. ~~in~~ In the case of a consolidation, that the certificate of incorporation of the resulting corporation shall be as is set forth in an attachment to the agreement;
5. ~~the~~ The manner of converting the shares of each of the constituent corporations into shares or other securities of the corporation surviving or resulting from the merger or consolidation, and, if any shares of any of the constituent corporations are not to be converted solely into shares or other securities of the surviving

or resulting corporation, the cash, property, rights, or securities of any other corporation which the holders of ~~such~~ the shares are to receive in exchange for or upon conversion of ~~such~~ the shares and the surrender of any certificates evidencing them, which cash, property, rights, or securities of any other corporation may be in addition to or in lieu of shares or other securities of the surviving or resulting corporation; and

6. ~~such other~~ Other details or provisions as are deemed desirable, including without limiting the generality of the foregoing, a provision for the payment of cash in lieu of the issuance or recognition of fractional shares, interests or rights, or for any other arrangement with respect thereto, consistent with the provisions of Section 1036 of this title. The agreement so adopted shall be executed and acknowledged in accordance with the provisions of Section 1007 of this title. Any of the terms of the agreement of merger or consolidation may be made dependent upon facts ascertainable outside of ~~such~~ the agreement; provided, that the manner in which ~~such~~ these facts shall operate upon the terms of the agreement is clearly and expressly set forth in the agreement of merger or consolidation. The term "facts" as used in this paragraph, includes, but is not limited to, the occurrence of any event, including a determination or action by any person or body, including the corporation.

C. The agreement required by the provisions of subsection B of this section shall be submitted to the shareholders of each constituent corporation at an annual or special meeting thereof for the purpose of acting on the agreement. Due notice of the time, place and purpose of the meeting shall be mailed to each holder of stock whether voting or nonvoting, of the corporation at ~~his~~ the address ~~as it~~ which appears on the records of the corporation, at least twenty (20) days prior to the date of the meeting. The notice shall contain a copy of the agreement or a brief summary thereof, as

the directors shall deem advisable; provided, however, ~~such~~ the notice shall be effective only with respect to mergers or consolidations for which the notice of the shareholders meeting to vote thereon has been mailed after November 1, 1988. At the meeting the agreement shall be considered and a vote taken for its adoption or rejection. If a majority of the outstanding stock of the corporation entitled to vote thereon shall be voted for the adoption of the agreement, that fact shall be certified on the agreement by the secretary or the assistant secretary of the corporation. If the agreement shall be so adopted and certified by each constituent corporation, it shall then be filed and shall become effective in accordance with the provisions of Section 1007 of this title. In lieu of filing an agreement of merger or consolidation required by this section, the surviving or resulting corporation may file a certificate of merger or consolidation executed in accordance with the provisions of Section 1007 of this title and which states:

1. ~~the~~ The name and state of incorporation of each of the constituent corporations;
2. ~~that~~ That an agreement of merger or consolidation has been approved, adopted, certified, executed, and acknowledged by each of the constituent corporations in accordance with the provisions of this section;
3. ~~the~~ The name of the surviving or resulting corporation;
4. ~~in~~ In the case of a merger, ~~such~~ the amendments or changes in the certificate of incorporation of the surviving corporation as are desired to be effected by the merger, or, if no ~~such~~ amendments or changes are desired, a statement that the certificate of incorporation of the surviving corporation shall be its certificate of incorporation;
5. ~~in~~ In the case of a consolidation, that the certificate of incorporation of the resulting corporation shall be as is set forth in an attachment to the certificate;

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

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

D. ~~1.~~ Any agreement of merger or consolidation may contain a provision that at any time prior to the ~~filing of~~ time that the agreement, or a certificate filed with the Secretary of State in lieu thereof, becomes effective in accordance with Section 1007 of this title, the agreement may be terminated by the board of directors of any constituent corporation notwithstanding approval of the agreement by the shareholders of all or any of the constituent corporations; provided, if the agreement of merger or consolidation is terminated after the filing of the agreement, or a certificate filed with the Secretary of State in lieu thereof, but before the agreement or certificate has become effective, a certificate of termination of merger or consolidation shall be filed in accordance with Section 1007 of this title. Any agreement of merger or consolidation may contain a provision that the boards of directors of the constituent corporations may amend the agreement at any time prior to the ~~filing of~~ time that the agreement, or a certificate ~~in lieu thereof,~~ filed with the Secretary of State, in lieu thereof, becomes effective in accordance with Section 1007 of this title; provided, that an amendment made subsequent to the adoption of the agreement by the shareholders of any constituent corporation shall not:

- a. ~~alter~~ 1. Alter or change the amount or kind of shares, securities, cash, property, ~~and~~ or rights to be received in exchange for or on conversion of all or

any of the shares of any class or series thereof of ~~such~~ the constituent corporation;

~~b. alter~~ 2. Alter or change any term of the certificate of incorporation of the surviving corporation to be effected by the merger or consolidation; or

~~e. alter~~ 3. Alter or change any of the terms and conditions of the agreement if ~~such~~ an alteration or change would adversely affect the holders of any class or series thereof of ~~such~~ the constituent corporation.

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

If the agreement of merger or consolidation is amended after the filing of the agreement, or a certificate in lieu thereof, with the Secretary of State, but before the agreement or certificate has become effective, a certificate of amendment of merger or consolidation shall be filed in accordance with Section 1007 of this title.

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

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

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

2. ~~each~~ Each share of stock of ~~such~~ the constituent corporation outstanding immediately prior to the effective date of the merger is

to be an identical outstanding or treasury share of the surviving corporation after the effective date of the merger; and

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

- a. if it has been adopted pursuant to paragraph 1 of this subsection, that the conditions specified have been satisfied, or
- b. if it has been adopted pursuant to paragraph 2 of this subsection, that no shares of stock of the corporation were issued prior to the adoption by the board of

directors of the resolution approving the agreement of merger or consolidation.

The agreement so adopted and certified shall then be filed and shall become effective in accordance with the provisions of Section 1007 of this title. ~~Such filing~~ Filing shall constitute a representation by the person who executes the certificate that the facts stated in the certificate remain true immediately prior to ~~such~~ filing.

G. 1. Notwithstanding the requirements of subsection C of this section, unless expressly required by its certificate of incorporation, no vote of shareholders of a constituent corporation shall be necessary to authorize a merger with or into a single direct or indirect wholly owned subsidiary of the constituent corporation if:

- a. the constituent corporation and the direct or indirect wholly owned subsidiary of the constituent corporation are the only constituent corporations to the merger,
- b. each share or fraction of a share of the capital stock of the constituent corporation outstanding immediately prior to the effective time of the merger is converted in the merger into a share or equal fraction of share of capital stock of a holding company having the same designations, rights, powers, and preferences, and the qualifications, limitations, and restrictions thereof, as the share of stock of the constituent corporation being converted in the merger,
- c. the holding company and each of the constituent corporations to the merger are corporations of this state,
- d. the certificate of incorporation and bylaws of the holding company immediately following the effective time of the merger contain provisions identical to the certificate of incorporation and bylaws of the

constituent corporation immediately prior to the effective time of the merger, other than provisions, if any, regarding the incorporator or incorporators, the corporate name, the registered office and agent, the initial board of directors, and the initial subscribers of shares and provisions contained in any amendment to the certificate of incorporation as were necessary to effect a change, exchange, reclassification, or cancellation of stock, if a change, exchange, reclassification, or cancellation has become effective,

e. as a result of the merger, the constituent corporation or its successor corporation becomes or remains a direct or indirect wholly owned subsidiary of the holding company,

f. the directors of the constituent corporation become or remain the directors of the holding company upon the effective time of the merger,

g. the certificate of incorporation of the surviving corporation immediately following the effective time of the merger is identical to the certificate of incorporation of the constituent corporation immediately prior to the effective time of the merger, other than provisions, if any, regarding the incorporator or incorporators, the corporate name, the registered office and agent, the initial board of directors, and the initial subscribers of shares and provisions contained in any amendment to the certificate of incorporation as were necessary to effect a change, exchange, reclassification, or cancellation of stock, if a change, exchange,

reclassification, or cancellation has become effective; provided, however, that:

(1) the certificate of incorporation of the surviving corporation shall be amended in the merger to contain a provision requiring that any act or transaction by or involving the surviving corporation that requires for its adoption under this title or its certificate of incorporation the approval of the shareholders of the surviving corporation shall, by specific reference to this subsection, require, in addition, the approval of the shareholders of the holding company or any successor by merger, by the same vote as is required by this title or by the certificate of incorporation of the surviving corporation, and

(2) the certificate of incorporation of the surviving corporation may be amended in the merger to reduce the number of classes and shares of capital stock that the surviving corporation is authorized to issue, and

h. the shareholders of the constituent corporation do not recognize gain or loss for federal income tax purposes as determined by the board of directors of the constituent corporation.

2. As used in this subsection, the term "holding company" means a corporation which, from its incorporation until consummation of a merger governed by this subsection, was at all times a direct or indirect wholly owned subsidiary of the constituent corporation and whose capital stock is issued in a merger.

3. From and after the effective time of a merger adopted by a constituent corporation by action of its board of directors and without any vote of shareholders pursuant to this subsection:

- a. to the extent the restriction of Section 1090.3 of this title applied to the constituent corporation and its shareholders at the effective time of the merger, restrictions shall apply to the holding company and its shareholders immediately after the effective time of the merger as though it were the constituent corporation, and all shareholders of stock of the holding company acquired in the merger shall for purposes of Section 1090.3 of this title be deemed to have been acquired at the time that the shareholder of stock of the constituent corporation converted in the merger was acquired; provided, that any shareholder who immediately prior to the effective time of the merger was not an interested shareholder within the meaning of Section 1090.3 of this title shall not solely by reason of the merger become an interested shareholder of the holding company, and
- b. if the corporate name of the holding company immediately following the effective time of the merger is the same as the corporate name of the constituent corporation immediately prior to the effective time of the merger, the shares of capital stock of the holding company into which the shares of capital stock of the constituent corporation are converted shall be represented by the stock certificates that previously represented the shares of capital stock of the constituent corporation. If any agreement of merger is adopted by a constituent corporation by action of its board of directors and without any vote of shareholders pursuant to this subsection, the secretary or assistant secretary of the constituent corporation shall certify on the agreement that the

agreement has been adopted pursuant to this subsection and that the conditions specified in the first sentence of this subsection have been satisfied. The agreement so adopted and certified shall then be filed and become effective in accordance with Section 1007 of this title. Filing shall constitute a representation by the person who executes the agreement that the facts stated in the certificate remain true immediately prior to the filing.

SECTION 16. AMENDATORY 18 O.S. 1991, Section 1082, is amended to read as follows:

Section 1082.

MERGER OR CONSOLIDATION OF DOMESTIC AND FOREIGN CORPORATIONS;

SERVICE OF PROCESS UPON SURVIVING OR RESULTING CORPORATION

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

formed permit a corporation of ~~such~~ that jurisdiction to merge or consolidate with a corporation of another jurisdiction.

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

1. ~~the~~ The terms and conditions of the merger or consolidation;
2. ~~the~~ The mode of carrying the same into effect;
3. ~~the~~ The manner of converting the shares of each of the constituent corporations into shares or other securities of the corporation surviving or resulting from the merger or consolidation and, if any shares of any of the constituent corporations are not to be converted solely into shares or other securities of the surviving or resulting corporation, the cash, property, rights, or securities of any other corporation which the holder of ~~such~~ the shares are to receive in exchange for, or upon conversion of, ~~such~~ the shares and the surrender of any certificates evidencing them, which cash, property, rights, or securities of any other corporation may be in addition to or in lieu of the shares or other securities of the surviving or resulting corporation;
4. ~~such~~ ~~other~~ Other details or provisions as are deemed desirable, including, without limiting the generality of the foregoing, a provision for the payment of cash in lieu of the issuance or recognition of fractional shares of the surviving or resulting corporation or of any other corporation the securities of which are to be received in the merger or consolidation, or for some other arrangement with respect thereto consistent with the provisions of Section 1036 of this title; and
5. ~~such~~ ~~other~~ Other provisions or facts as shall be required to be set forth in the certificate of incorporation by the laws of the state which are stated in the agreement to be the laws that shall govern the surviving or resulting corporation and that can be stated in the case of a merger or consolidation. Any of the terms of the agreement of merger or consolidation may be made dependent upon

facts ascertainable outside of ~~such~~ the agreement, ~~;~~ provided, that the manner in which ~~such~~ the facts shall operate upon the terms of the agreement is clearly and expressly set forth in the agreement of merger or consolidation. The term "facts" as used in this paragraph, includes, but is not limited to, the occurrence of any event, including a determination or action by any person or body, including the corporation.

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

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

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

3. ~~the~~ The name of the surviving or resulting corporation;

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

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

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

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

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

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

D. If the corporation surviving or resulting from the merger or consolidation is to be governed by the laws of the District of Columbia or any state other than this state, it shall agree that it may be served with process in this state in any proceeding for enforcement of any obligation of any constituent corporation of this state, as well as for enforcement of any obligation of the surviving or resulting corporation arising from the merger or consolidation, including any suit or other proceeding to enforce the right of any shareholders as determined in appraisal proceedings pursuant to the provisions of Section 1091 of this title, and shall irrevocably appoint the Secretary of State as its agent to accept service of process in any ~~such~~ suit or other proceedings and shall specify the address to which a copy of ~~such~~ process shall be mailed by the Secretary of State. In the event of ~~such~~ service upon the Secretary of State in accordance with the provisions of this subsection, the

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

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

Section 1081 of this title shall apply to any merger pursuant to the provisions of this section.

SECTION 17. AMENDATORY 18 O.S. 1991, Section 1083, is amended to read as follows:

Section 1083.

MERGER OF PARENT CORPORATION AND SUBSIDIARY OR SUBSIDIARIES

A. In any case in which at least ninety percent (90%) of the outstanding shares of each class of ~~the~~ stock of a corporation or corporations, other than a corporation which has in its certificate of incorporation the provision required by division (1) of subparagraph g of paragraph 1 of subsection G of Section 1081 of this title, is owned by another corporation and one of ~~such the~~ corporations is a corporation of this state and the other or others are corporations of this state or of any other state or states or of the District of Columbia, and the laws of such the other state or states or of the District of Columbia permit a corporation of ~~such that~~ jurisdiction to merge with a corporation of another jurisdiction, the corporation having such stock ownership may either merge ~~such the~~ other corporation or corporations into itself and assume all of its or their obligations, or merge itself, or itself and one or more of ~~such the~~ other corporations, into one of ~~such the~~ other corporations by executing, acknowledging, and filing, in accordance with the provisions of Section 1007 of this title, a certificate of ~~such~~ ownership and merger setting forth a copy of the resolution of its board of directors to ~~so~~ merge and the date of ~~the~~ its adoption ~~thereof~~; provided, however, that in case the parent corporation shall not own all the outstanding stock of all the subsidiary corporations, which are parties to a the merger as ~~aforsaid~~, the resolution of the board of directors of the parent corporation shall state the terms and conditions of the merger, including the securities, cash, property, or rights to be issued, paid, delivered, or granted by the surviving corporation upon

surrender of each share of the subsidiary corporation or corporations not owned by the parent corporation. Any of the terms of the resolution of the board of directors to so merge may be made dependent upon facts ascertainable outside of such resolution, provided that the manner in which such facts shall operate upon the terms of the resolution is clearly and expressly set forth in the resolution. The term "facts", as used in the preceding sentence, includes, but is not limited to, the occurrence of any event, including a determination or action by any person or body, including the corporation. If the parent corporation is not the surviving corporation, the resolution shall include provision for the pro rata issuance of stock of the surviving corporation to the holders of the stock of the parent corporation on surrender of any certificates therefor, and the certificate of ownership and merger shall state that the proposed merger has been approved by a majority of the outstanding stock of the parent corporation entitled to vote thereon at a meeting thereof duly called and held after twenty (20) days' notice of the purpose of the meeting is mailed to each ~~such~~ shareholder at ~~his~~ the shareholder's address as it appears on the records of the corporation if the parent corporation is a corporation of this state or state that the proposed merger has been adopted, approved, certified, executed, and acknowledged by the parent corporation in accordance with the laws under which it is organized if the parent corporation is not a corporation of this state. If the surviving corporation exists under the laws of the District of Columbia or any state other than this state, the provisions of subsection D of Section 1082 of this title shall also apply to a merger pursuant to the provisions of this section.

B. Subject to the provisions of paragraph 1 of subsection A of Section 1006 of this title, if the surviving corporation is an Oklahoma corporation, it may change its corporate name by the inclusion of a provision to that effect in the resolution of merger

adopted by the directors of the parent corporation and set forth in the certificate of ownership and merger, and upon the effective date of the merger, the name of the corporation shall be ~~se~~ changed.

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

D. In the event all of the stock of a subsidiary Oklahoma corporation party to a merger effected pursuant to the provisions of this section is not owned by the parent corporation immediately prior to the merger, the shareholders of the subsidiary Oklahoma corporation party to the merger shall have appraisal rights as set forth in Section 1091 of this title.

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

~~and provided further that the surviving or resulting corporation shall be a corporation of this state.~~

SECTION 18. 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~~ an 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~~ the agreement, ~~;~~ provided, that the manner in which ~~such~~ the facts shall operate upon the terms of the agreement is clearly and expressly set forth in the agreement of merger or consolidation. The term "facts" as used in this paragraph, includes, but is not limited to, the occurrence of any event, including a determination or action by any person or body, including the corporation.

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~~ 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 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,~~ that the 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.~~ Each member who has the right to vote for the election of the members of the governing body of his corporation ~~being~~ shall be entitled to one vote. If the votes of two-thirds (2/3) of the total number of voting 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~~ the 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~~ the 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 19. AMENDATORY 18 O.S. 1991, Section 1090.2, is amended to read as follows:

Section 1090.2

MERGER OR CONSOLIDATION OF DOMESTIC CORPORATION

AND ~~LIMITED PARTNERSHIP~~ BUSINESS ENTITY

A. Any one or more corporations of this state may merge or consolidate with one or more ~~limited partnerships~~ business entities, of this state or of any other state or states of the United States, or of the District of Columbia, unless the laws of ~~such~~ the other state or states or the District of Columbia forbid ~~such~~ the merger or consolidation. ~~Such~~ A corporation or corporations and ~~such~~ one or more ~~limited partnerships~~ business entities may merge with or into a corporation, which may be any one of ~~such~~ the corporations, or they may merge with or into a ~~limited partnership~~ business entity, which may be any one of ~~such limited partnerships~~ the business entities, or they may consolidate into a new corporation or ~~limited partnership~~ business entity formed by the consolidation, which shall be a corporation or ~~limited partnership~~ business entity of this state or any other state of the United States, or the District of Columbia, which permits ~~such~~ the merger or consolidation, pursuant to an agreement of merger or consolidation, as the case may be, complying and approved in accordance with this section. As used in this section, "business entity" means a domestic or foreign partnership whether general or limited, limited liability company, business trust, common law trust, or other unincorporated business.

B. Each ~~such~~ corporation and ~~limited partnership~~ business entity merging or consolidating shall enter into a written agreement of merger or consolidation. The agreement shall state:

1. The terms and conditions of the merger or consolidation;
2. The mode of carrying the consolidation into effect;

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

4. ~~such other~~ Other details or provisions as are deemed desirable, including, but not limited to, a provision for the payment of cash in lieu of the issuance of fractional shares or interests of the surviving or resulting corporation or ~~limited partnership business entity~~. Any of the terms of the agreement of merger or consolidation may be made dependent upon facts ascertainable outside of ~~such the~~ 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. The term "facts" as used in this paragraph, includes, but is not limited to, the occurrence of any event, including a determination or action by any person or body, including the corporation.

C. The agreement required by subsection B of this section shall be adopted, approved, certified, executed, and acknowledged by each of the corporations in the same manner as is provided in Section 1081 of Title 18 of the Oklahoma Statutes and, in the case of the ~~limited partnerships~~ business entities, in accordance with their ~~limited partnership~~ constituent agreements and in accordance with the laws of the state under which they are formed, as the case may be. The agreement shall be filed and recorded and shall become effective for all purposes of the laws of this state when and as provided in Section 1081 of Title 18 of the Oklahoma Statutes with respect to the merger or consolidation of corporations of this state. In lieu of filing and recording the agreement of merger or consolidation, the surviving or resulting corporation or ~~limited partnership~~ business entity may file a certificate of merger or consolidation, executed in accordance with Section 1007 of Title 18 of the Oklahoma Statutes if the surviving or resulting entity is a corporation, or by a ~~general partner~~ person authorized to act for the business entity, if the surviving or resulting entity is a ~~limited partnership~~ business entity, which states:

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

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

3. The name of the surviving or resulting corporation or ~~limited partnership~~ business entity;

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

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

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

7. That a copy of the agreement of consolidation or merger shall be furnished by the surviving or resulting entity, on request and without cost, to any shareholder of any constituent corporation or any partner of any constituent ~~limited partnership~~ business entity; and

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

D. If the entity surviving or resulting from the merger or consolidation is to be governed by the laws of the District of Columbia or any state other than this state, the entity shall agree that it may be served with process in this state in any proceeding for enforcement of any obligation of any constituent corporation or ~~limited partnership~~ business entity of this state, as well as for enforcement of any obligation of the surviving or resulting corporation or ~~limited partnership~~ business entity arising from the merger or consolidation, including any suit or other proceeding to enforce the right of any shareholders as determined in appraisal proceedings pursuant to the provisions of Section 1091 of ~~Title 18 of the Oklahoma Statutes~~ this title, and shall irrevocably appoint the Secretary of State as its agent to accept service of process in any such suit or other proceedings and shall specify the address to which a copy of ~~such~~ any process shall be mailed by the Secretary of State. In the event of service upon the Secretary of State pursuant to this subsection, the Secretary of State shall forthwith notify the surviving or resulting corporation or ~~limited partnership~~

~~thereof~~ business entity by a letter, sent by certified mail with return receipt requested, directed to ~~such~~ the surviving or resulting corporation or ~~limited partnership~~ business entity at its specified address ~~so specified~~, unless ~~such~~ the surviving or resulting corporation or ~~limited partnership~~ business entity shall have designated in writing to the Secretary of State a different address for ~~such~~ that purpose, in which case it shall be mailed to the last address ~~so~~ designated. Such letter shall enclose a copy of the process and any other papers served on the Secretary of State pursuant to this subsection. It shall be the duty of the plaintiff in the event of ~~such~~ any service to serve process and any other papers in duplicate, to notify the Secretary of State that service is being effected pursuant to this subsection and to pay the Secretary of State the fee provided for in paragraph 7 of subsection A of Section 1142 of ~~Title 18 of the Oklahoma Statutes~~ this title, which fee shall be taxed as part of the costs in the proceeding, if the plaintiff shall prevail therein. The Secretary of State shall maintain an alphabetical record of any such service, setting forth the name of the plaintiff and the defendant, the title, docket number, and nature of the proceeding in which process has been served upon the Secretary of State, the fact that service has been served upon the Secretary of State, the fact that service has been effected pursuant to this subsection, the return date thereof, and the date service was made. The Secretary of State shall not be required to retain ~~such~~ this information longer than five (5) years from the date of receipt of the service of process by the Secretary of State.

E. Subsections D, E ~~and~~, F and G of Section 1081 of ~~Title 18 of the Oklahoma Statutes~~ this title and Sections 1088 through 1090 and 1127 of ~~Title 18 of the Oklahoma Statutes~~ this title, insofar as they are applicable, shall apply to mergers or consolidations between corporations and ~~limited partnership~~ business entities.

SECTION 20. AMENDATORY 18 O.S. 1991, Section 1090.3, is amended to read as follows:

Section 1090.3

BUSINESS COMBINATIONS WITH INTERESTED SHAREHOLDERS

A. Notwithstanding any other provisions of ~~Title 18 of the Oklahoma Statutes~~ this title, a corporation shall not engage in any business combination with any interested shareholder for a period of three (3) years following the ~~date~~ time that ~~such~~ the person became an interested shareholder, unless:

1. ~~prior~~ Prior to ~~such date~~ that time, the board of directors of the corporation approved either the business combination or the transaction which resulted in the person becoming an interested shareholder;

2. ~~upon~~ Upon consummation of the transaction which resulted in the person becoming an interested shareholder, the interested shareholder owned of record or beneficially ~~capital stock having~~ at least eighty-five percent (85%) of ~~all voting power~~ the outstanding voting stock of the corporation at the time the transaction commenced, excluding for purposes of determining ~~such~~ the voting power the votes attributable to those shares owned of record or beneficially by:

- a. persons who are directors and also officers, and
- b. employee stock plans in which employee participants do not have the right to determine confidentially whether shares held subject to the plan will be tendered in a tender or exchange offer; or

3. ~~on~~ At or subsequent to such ~~date~~ time, the business combination is approved by the board of directors and authorized at an annual or special meeting of shareholders, and not by written consent, by the affirmative vote of at least ~~sixty-six and two-thirds percent (66 2/3%)~~ (2/3) of ~~all voting power~~ the outstanding

voting stock which is not attributable to shares owned of record or beneficially by the interested shareholder.

B. The restrictions contained in this section shall not apply if:

1. ~~the~~ The corporation's original certificate of incorporation contains a provision expressly electing not to be governed by this section;

2. ~~the~~ The corporation, by action of its board of directors, adopts an amendment to its bylaws within ninety (90) days of the effective date of this section, expressly electing not to be governed by this section, which amendment shall not be further amended by the board of directors;

3. ~~the~~ a. The corporation, by action of its shareholders, adopts an amendment to its certificate of incorporation or bylaws expressly electing not to be governed by this section; ~~and~~ provided that, in addition to any other vote required by law, ~~such~~ an amendment to the certificate of incorporation or bylaws must be approved by the affirmative vote of a majority of ~~all voting power~~ the outstanding voting stock of a the corporation.

~~An~~

b. An amendment adopted pursuant to this paragraph shall be effective immediately in the case of a corporation that both:

- (1) has never had a class of voting stock that falls within any of the three categories set out in paragraph 4 of this subsection, and
- (2) has not elected by a provision in its original certificate of incorporation or any amendment thereto to be governed by this section.

c. In all other cases, an amendment adopted pursuant to this paragraph shall not be effective until twelve (12) months after the adoption of ~~such~~ the amendment and shall not apply to any business combination between ~~such~~ a corporation and any person who became an interested shareholder of ~~such~~ the corporation on or prior to ~~such~~ the adoption. A bylaw amendment adopted pursuant to this paragraph shall not be further amended by the board of directors;

4. ~~the~~ The corporation does not have a class of voting stock that is:

- a. listed on a national securities exchange,
- b. authorized for quotation on ~~an inter-dealer quotation system of a registered national securities association~~ the NASDAQ Stock Market, or
- c. held of record by one thousand or more shareholders, unless any of the foregoing results from action taken, directly or indirectly, by an interested shareholder or from a transaction in which a person becomes an interested shareholder;

5. ~~a~~ A person becomes an interested shareholder inadvertently and:

- a. as soon as practicable divests itself of ownership of sufficient shares so that the person ceases to be an interested shareholder, and
- b. would not, at any time within the three-year period immediately prior to a business combination between the corporation and ~~such~~ the person, have been an interested shareholder but for the inadvertent acquisition; ~~or~~

6. a. ~~the~~ The business combination is proposed prior to the consummation or abandonment of, and subsequent to the

earlier of the public announcement or the notice required hereunder of, a proposed transaction which:

- (1) constitutes one of the transactions described in subparagraph b of this paragraph,
- (2) is with or by a person who ~~either:~~
  - (a) was not an interested shareholder during the previous three (3) years ~~or who, or~~
  - (b) became an interested shareholder with the approval of the corporation's board of directors or during the period described in paragraph 7 of this subsection, and
- (3) is approved or not opposed by a majority of the members of the board of directors then in office, but not less than one, who were directors prior to any person becoming an interested shareholder during the previous three (3) years or were recommended for election or elected to succeed ~~such the~~ the directors by a majority of ~~such the~~ the directors~~†.~~

b. ~~the~~ The proposed transactions referred to in subparagraph a of this paragraph are limited to:

- (1) a share acquisition pursuant to Section 1090.1 of ~~Title 18 of the Oklahoma Statutes~~ this title, or a merger or consolidation of the corporation, except for a merger in respect of which, pursuant to subsection F or G of Section 1081 of ~~Title 18 of the Oklahoma Statutes~~ this title, no vote of the shareholders of the corporation is required,
- (2) a sale, lease, exchange, mortgage, pledge, transfer, or other disposition, in one transaction or a series of transactions, whether as part of a dissolution or otherwise, of assets

of the corporation or of any direct or indirect majority-owned subsidiary of the corporation, other than to any direct or indirect wholly-owned subsidiary or to the corporation, having an aggregate market value equal to fifty percent (50%) or more of either the aggregate market value of all of the assets of the corporation determined on a consolidated basis or the aggregate market value of all the outstanding stock of the corporation, or

- (3) a proposed tender or exchange offer for outstanding stock of the corporation which represents fifty percent (50%) or more of ~~all voting power~~ the outstanding voting stock of the corporation. The corporation shall give not less than twenty (20) days' notice to all interested shareholders prior to the consummation of any of the transactions described in divisions (1) or (2) of this subparagraph; or

7. The business combination is with an interested shareholder who became an interested shareholder at a time when the restriction contained in this section did not apply by reason of any of paragraphs 1 through 4 of this subsection; provided, however, that this paragraph shall not apply if, at the time the interested shareholder became an interested shareholder, the corporation's certificate of incorporation contained a provision authorized by this subsection.

C. Notwithstanding paragraphs 1, 2, 3, and 4 of subsection B of this section, a corporation may elect by a provision of its original certificate of incorporation or any amendment thereto to be governed by this section; provided, that any ~~such~~ amendment to the certificate of incorporation shall not apply to restrict a business

combination between the corporation and an interested shareholder of the corporation if the interested shareholder became ~~such an~~ interested shareholder prior to the effective date of the amendment.

D. As used in this section ~~only~~:

1. ~~"affiliate"~~ "Affiliate" means a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, another person;

2. ~~"all voting power"~~ means ~~the aggregate number of votes which the holders of all classes of capital stock of the corporation would be entitled to cast in an election of directors generally;~~

3. ~~"associate"~~ "Associate", when used to indicate a relationship with any person, means:

- a. any corporation ~~or organization,~~ partnership, unincorporated association, or other entity of which ~~such the~~ the person is a director, officer, or partner or is, ~~of record or beneficially,~~ the owner, of ~~outstanding stock~~ record or beneficially of the ~~corporation having~~ twenty percent (20%) or more of ~~all voting power of the corporation~~ any class of the voting stock of the corporation,
- b. any trust or other estate in which ~~such the~~ the person has a beneficial interest of at least ~~a~~ twenty percent (20%) beneficial interest or as to which such person serves as trustee or in a similar fiduciary capacity, and
- c. any relative or spouse of ~~such the~~ the person, or any relative of ~~such the~~ the spouse, who has the same residence as ~~such the~~ the person;

4. ~~"beneficial ownership" shall have the meaning ascribed to such term by Rule 13d-3 under the Securities Exchange Act of 1934, 15 U.S.C. Section 78a et seq., as amended, except that a person shall be deemed to be the owner or beneficial owner of securities of~~

~~which he has the right to acquire ownership either immediately or only after the passage of any time or the giving of notice or both; provided, however, that a person shall not be deemed the owner or beneficial owner of any stock if:~~

- ~~a. the agreement, arrangement or understanding to vote such stock arises solely from a revocable proxy or consent given in response to a proxy or consent solicitation made to more than ten persons, or~~
- ~~b. the stock is tendered pursuant to a tender or exchange offer made by such person or any of such person's affiliates or associates, until such tendered stock is accepted for purchase or exchange;~~

~~5. "business 3. "Business combination", when used in reference to any corporation and any interested shareholder of ~~such~~ the corporation, means:~~

- a. any merger or consolidation of the corporation or any direct or indirect majority-owned subsidiary of the corporation with:
  - (1) the interested shareholder, or
  - (2) any other corporation if the merger or consolidation is caused by the interested shareholder and, as a result of ~~such~~ the merger or consolidation subsection A of this section is not applicable to the surviving ~~corporation~~ entity,
- b. any sale, lease, exchange, mortgage, pledge, transfer, or other disposition, in one transaction or a series of transactions, except proportionately as a shareholder of ~~such~~ the corporation, to or with the interested shareholder, whether as part of a dissolution or otherwise, of assets of the corporation or of any direct or indirect majority-owned subsidiary

of the corporation which assets have an aggregate market value equal to ten percent (10%) or more of either the aggregate market value of all the assets of the corporation determined on a consolidated basis or the aggregate market value of all the outstanding stock of the corporation,

- c. any transaction which results in the issuance or transfer by the corporation or by any direct or indirect majority-owned subsidiary of the corporation of any stock of the corporation or of ~~such~~ the subsidiary to the interested shareholder, except:
- (1) pursuant to the exercise, exchange, or conversion of securities exercisable for, exchangeable for, or convertible into stock of ~~such~~ the corporation or any ~~such~~ subsidiary which securities were outstanding prior to the time that the interested shareholder became ~~such~~ an interested shareholder,
  - (2) pursuant to a merger under subsection G of Section 1081 of this title,
  - (3) pursuant to a dividend or distribution paid or made, or the exercise, exchange, or conversion of securities exercisable for, exchangeable for, or convertible into stock of ~~such~~ the corporation or any ~~such~~ subsidiary which security is distributed, pro rata, to all holders of a class or series of stock of ~~such~~ the corporation subsequent to the time the interested shareholder became ~~such~~ an interested shareholder, or
  - ~~(3)~~ (4) pursuant to an exchange offer by the corporation to purchase stock made on the same terms to all holders of ~~said~~ the stock;

(5) any issuance or transfer of stock by the corporation; provided, however, that in no case under divisions ~~(2)~~ (3) ~~and (3)~~ through (5) of this subparagraph shall there be an increase in the interested shareholder's proportionate share of the stock of any class or series of the corporation or of ~~all voting power~~ the voting stock of the corporation,

- d. any transaction involving the corporation or any direct or indirect majority-owned subsidiary of the corporation which has the effect, directly or indirectly, of increasing the proportionate share of the stock of any class or series, or securities convertible into the stock of any class or series, or ~~all voting power~~ the outstanding voting stock, of the corporation or of any ~~such~~ subsidiary which is owned by the interested shareholder, except as a result of immaterial changes due to fractional share adjustments or as a result of any purchase or redemption of any shares of stock not caused, directly or indirectly, by the interested shareholder,
- e. any receipt by the interested shareholder of the benefit, directly or indirectly, except proportionately as a shareholder of ~~such~~ the corporation, of any loans, advances, guarantees, pledges, or other financial benefits, other than those expressly permitted in subparagraphs a through d of this paragraph, provided by or through the corporation or any direct or indirect majority-owned subsidiary, or
- f. any share acquisition by the interested shareholder from the corporation or any direct or indirect

majority-owned subsidiary of the corporation pursuant to Section 1090.1 of ~~Title 18 of the Oklahoma Statutes~~ this title;

~~6. "control"~~ 4. "Control", including the terms "controlling", "controlled by" and "under common control with", means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting stock, by contract, or otherwise. A person who ~~owns, of record or beneficially, outstanding stock of the corporation having~~ is the owner of twenty percent (20%) or more of ~~all voting power~~ the outstanding voting stock of ~~the any~~ corporation, partnership, unincorporated association or other entity shall be presumed to have control of ~~such corporation~~ the entity, in the absence of proof by a preponderance of the evidence to the contrary. Notwithstanding the foregoing, a presumption of control shall not apply where ~~such~~ the person holds stock, in good faith and not for the purpose of circumventing this section, as an agent, bank, broker, nominee, custodian, or trustee for one or more owners who do not individually or as a group have control of ~~such corporation~~ the entity;

~~7. "group" means two or more persons who agree to act together for the purpose of acquiring, holding, voting or disposing of securities of the corporation;~~

~~8. 5.~~ a. ~~"interested~~ "Interested shareholder" means:

(1) any person, other than the corporation and any direct or indirect majority-owned subsidiary of the corporation, that:

(a) ~~owns of record or beneficially outstanding stock of the corporation having~~ is the owner of fifteen percent (15%) or more of ~~all voting power~~ the outstanding voting stock of the corporation, or

(b) is an affiliate or associate of the corporation and ~~owned of record or beneficially outstanding stock of the corporation having~~ was the owner of fifteen percent (15%) or more of ~~all voting power~~ the outstanding voting stock of the corporation at any time within the three-year period immediately prior to the date on which it is sought to be determined whether ~~such~~ the person is an interested shareholder, and

(2) the affiliates and associates of ~~such~~ the person~~†~~.

b. ~~the term "interested~~ "Interested shareholder" shall not ~~include~~ mean:

(1) any person who:

(a) ~~owned of record or beneficially~~ shares in excess of the fifteen percent (15%) limitation set forth herein as of, or acquired such shares pursuant to a tender offer commenced prior to, September 1, 1991, or pursuant to an exchange offer announced prior to September 1, 1991, and commenced within ninety (90) days thereafter and either:

i. continued to own shares in excess of ~~such~~ the fifteen percent (15%) limitation or would have but for action by the corporation, or

ii. is an affiliate or associate of the corporation and so continued, or so would have continued but for action by

the corporation, to be the owner of  
fifteen percent (15%) or more of the  
outstanding voting stock of the  
corporation at any time within the  
three-year period immediately prior to  
the date on which it is sought to be  
determined whether the person is an  
interested shareholder, or

(b) acquired ~~such~~ the shares from a person described in subdivision (a) of this division by gift, inheritance, or in a transaction in which no consideration was exchanged, or

(2) any person whose ownership of shares in excess of the fifteen percent (15%) limitation set forth herein is the result of action taken solely by the corporation; provided, that ~~such~~ the person shall be an interested shareholder if thereafter ~~he~~ the person acquires additional shares of voting stock of the corporation, except as a result of further corporate action not caused, directly or indirectly, by ~~such~~ the person.

c. ~~for~~ For the purpose of determining whether a person is an interested shareholder, the stock of the corporation deemed to be outstanding shall include stock deemed to be owned ~~of record or beneficially~~ by ~~such~~ the person through application of paragraph 8 of this subsection, but shall not include any other unissued stock of ~~such~~ the corporation which may be issuable pursuant to any agreement, arrangement, or understanding, or upon exercise of conversion rights, warrants, or options, or otherwise;

~~9. "person"~~ 6. "Person" means any individual, corporation, partnership, unincorporated association, any other entity, any group and any member of a group;

7. "Stock" means, with respect to any corporation, capital stock and, with respect to any other entity, any equity interest;

8. "Voting stock" means, with respect to any corporation, stock of any class or series entitled to vote generally in the election of directors and, with respect to any entity that is not a corporation, any equity interest entitled to vote generally in the election of the governing body of the entity; and

9. "Owner", including the terms "own" and "owned", when used with respect to any stock, means a person who individually or with or through any of its affiliates or associates:

a. beneficially owns the stock, directly or indirectly,  
or

b. has:

(1) the right to acquire the stock, whether the right is exercisable immediately or only after the passage of time, pursuant to any agreement, arrangement, or understanding, or upon the exercise of conversion rights, exchange rights, warrants, or options, or otherwise; provided, however, that a person shall not be deemed the owner of stock tendered pursuant to a tender or exchange offer made by the person or any of the person's affiliates or associates until the tendered stock is accepted for purchase or exchange, or

(2) the right to vote the stock pursuant to any agreement, arrangement, or understanding; provided, however, that a person shall not be deemed the owner of any stock because of the

person's right to vote the stock if the agreement, arrangement, or understanding to vote the stock arises solely from a revocable proxy or consent given in response to a proxy or consent solicitation made to ten or more persons, or  
c. has any agreement, arrangement, or understanding for the purpose of acquiring, holding, or voting, except voting pursuant to a revocable proxy or consent as described in division (2) of subparagraph b of this paragraph, or disposing of the stock with any other person that beneficially owns, or whose affiliates or associates beneficially own, directly or indirectly, the stock.

E. No provisions of a certificate of incorporation or bylaw shall require, for any vote of shareholders required by this section, a greater vote of shareholders than that specified in this section.

SECTION 21. AMENDATORY 18 O.S. 1991, Section 1091, is amended to read as follows:

Section 1091.

#### APPRAISAL RIGHTS

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

used in this section, the word "shareholder" means a holder of record of stock in a stock corporation and also a member of record of a nonstock corporation; the words "stock" and "share" mean and include what is ordinarily meant by those words and also membership or membership interest of a member of a nonstock corporation; and "depository receipt" means an 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, other than a merger effected pursuant to subsection G of Section 1081, 1082, 1086, 1087, 1090.1 or ~~1091.1~~ 1090.2 of this title ~~or Section 12 of this act.~~

2. a. No appraisal rights under this section shall be available for the shares of any class or series of stock 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 designated as a national market system security on an interdealer quotation system by the National Association of Securities Dealers, Inc.;
- or

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

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 in subsection G of Section 1081 of this title.

- b. In addition, no appraisal rights shall be available for any shares of stock, or depository receipts in respect thereof, 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~~ 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, 1090.1 or 1090.2 of this title to accept for ~~such~~ the stock anything except:

- a. shares of stock of the corporation surviving or resulting from ~~such~~ the merger or consolidation, ~~or~~ depository receipts 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 designated as a national market system security on an interdealer quotation system by the National Association of

Securities Dealers, Inc. or held of record by more than two thousand ~~shareholders,~~ holders, or

- c. cash in lieu of fractional shares ~~of the corporations~~ or fractional depository receipts described in subparagraphs a and b of this paragraph~~,~~ or
- d. any combination of the shares of stock, depository receipts, and cash in lieu of the fractional shares or 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~~ the 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~~ The 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~~ the 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~~ is approved pursuant to the provisions of Section 1073 or 1083 of this title, ~~the surviving or resulting~~ each constituent corporation, either before the effective date of the merger or consolidation or within ten (10) days thereafter, shall notify each of the ~~shareholders~~ holders of any class or series of stock of such constituent corporation who are entitled to appraisal rights of the ~~effective date~~ approval of the merger or consolidation and that appraisal rights are available for any or all of the shares of the class or series of stock 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;~~ provided, if the notice is given on or after the effective date of the merger or consolidation, the notice shall be given by the surviving or resulting corporation to all the holders

of any class or series of stock of a constituent corporation that are entitled to appraisal rights. The notice may, and, if given on or after the effective date of the merger or consolidation, shall, also notify the shareholders of the effective date of the merger or consolidation. 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 holder's shares of the shareholder. ~~Such~~ The 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 the holder's shares ~~of the shareholder.~~ If the notice does not notify shareholders of the effective date of the merger or consolidation either:

- a. each constituent corporation shall send a second notice before the effective date of the merger or consolidation notifying each of the holders of any class or series of stock of the constituent corporation that are entitled to appraisal rights of the effective date of the merger or consolidation, or
- b. the surviving or resulting corporation shall send a second notice to all holders on or within ten (10) days after the effective date of the merger or consolidation; provided, however, that if the second notice is sent more than twenty (20) days following the mailing of the first notice, the second notice need only be sent to each shareholder who is entitled to appraisal rights and who has demanded appraisal of the holder's shares in accordance with this subsection. An affidavit of the secretary or assistant secretary or of the transfer agent of the corporation that is required to give either notice that the notice has been given shall, in the absence

of fraud, be prima facie evidence of the facts stated therein. For purposes of determining the shareholders entitled to receive either notice, each constituent corporation may fix, in advance, a record date that shall be not more than ten (10) days prior to the date the notice is given; provided, if the notice is given on or after the effective date of the merger or consolidation, the record date shall be the effective date. If no record date is fixed and the notice is given prior to the effective date, the record date shall be the close of business on the day next preceding the day on which the notice is given.

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;~~ 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~~ the shares. ~~Such~~ The 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~~ regarding 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~~ on the 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~~ 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~~ other 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~~ the 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~~ of 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~~ this direction, the court may dismiss the proceedings as to ~~such~~ that 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~~ the 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~~ the stock. The court's decree may be enforced as other decrees in the district court may be enforced, whether ~~such~~ the 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~~ the 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~~ the 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~~ the shareholder to an appraisal shall cease. ~~Provided, however;~~ provided, further, 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~~ any 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 22. AMENDATORY 18 O.S. 1991, Section 1094, is amended to read as follows:

Section 1094.

DISSOLUTION OF JOINT VENTURE CORPORATION HAVING TWO SHAREHOLDERS

A. If the shareholders of a corporation of this state, having only two shareholders each of which owns fifty percent (50%) of the stock therein, shall be engaged in the prosecution of a joint venture and if ~~such~~ the shareholders shall be unable to agree upon the desirability of discontinuing ~~such~~ the joint venture and disposing of the assets used in ~~such~~ the venture, either shareholder may, unless otherwise provided in the certificate of incorporation of the corporation or in a written agreement between the shareholders, file with the district court a petition stating that it desires to discontinue ~~such~~ the joint venture and to dispose of the assets used in ~~such~~ the venture in accordance with a plan to be agreed upon by both shareholders or that, if no ~~such~~ plan shall be agreed upon by both shareholders, the corporation be dissolved. ~~Such~~ The petition shall have attached thereto a copy of the proposed plan of discontinuance and distribution and a certificate stating that copies of ~~such~~ the petition and plan have been transmitted in writing to the other shareholder and to the directors and officers of ~~such~~ the corporation. The petition and certificate shall be executed and acknowledged in accordance with the provisions of Section 7 1007 of this ~~act~~ title.

B. 1. Unless both shareholders file with the district court:

~~1. within three (3) months of the date of the filing of such petition, a certificate similarly executed and acknowledged stating that they have agreed on such plan, or a modification thereof; and~~

~~2. within one (1) year from the date of the filing of such petition, a certificate similarly executed and acknowledged stating that the distribution provided by such plan has been completed,~~  
the district court may dissolve ~~such~~ the corporation and may by appointment of one or more trustees or receivers with all the powers and title of a trustee or receiver appointed pursuant to the provisions of Section ~~100~~ 1100 of this ~~act~~ title, administer and wind up its affairs:

a. within three (3) months of the date of the filing of the petition, a certificate similarly executed and acknowledged stating that they have agreed on the plan, or a modification thereof, and

b. within one (1) year from the date of the filing of the petition, a certificate similarly executed and acknowledged stating that the distribution provided by the plan has been completed.

2. Either or both of the periods provided for in ~~paragraphs~~ paragraph 1 and 2 of this subsection may be extended by agreement of the shareholders, evidenced by a certificate similarly executed, acknowledged and filed with the district court prior to the expiration of ~~such~~ the period.

SECTION 23. 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. 1. A dissolved corporation or successor entity which has followed the procedures described in Section ~~25~~ 1100.1 of this ~~act~~ title shall:

- ~~1.~~ a. pay the claims made and not rejected in accordance with subsection A of Section ~~25~~ 1100.1 of this ~~act~~ title;
- ~~2.~~ b. post the security offered and not rejected pursuant to paragraph 2 of subsection B of Section ~~25~~ 1100.1 of this ~~act~~ title;
- ~~3.~~ c. 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.~~ d. pay or make provision for all other ~~obligations of~~ claims that are mature, known, and uncontested or that have been finally determined to be owing by the corporation or ~~such~~ successor entity. ~~Such claims~~

2. Claims or obligations shall be paid in full and any ~~such~~ provision for payment shall be made in full if there are sufficient ~~funds~~ assets. If there are insufficient ~~funds~~ assets, ~~such the~~ 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~~ assets legally available therefor. Any remaining ~~funds~~ assets shall be distributed to the shareholders of the dissolved corporation; provided, however, that ~~such~~ distribution shall not be made before the expiration of one hundred fifty (150) days from the date of the last notice of rejections given pursuant to paragraph 3 of subsection A of Section ~~25~~ 1100.1 of this ~~act~~ title. In the absence of actual fraud, the judgment of the directors of the dissolved corporation or the governing persons of ~~such the~~ successor entity as to the provision made for the payment of all obligations under paragraph 4 of this subsection shall be conclusive.

B. A dissolved corporation or successor entity which has not followed the procedures described in Section ~~25~~ 1100.1 of this ~~act~~ title shall pay, prior to the expiration of the period described in

Section 1099 of this title, adopt a plan of distribution pursuant to which the dissolved corporation or successor entity pays or make  
makes reasonable provision to pay all claims and obligations,  
including all contingent, conditional, or unmatured claims known to  
the corporation or ~~such~~ the successor entity ~~and all claims which~~  
~~are known to the dissolved corporation or such successor entity or~~  
shall make 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. ~~Such~~ within ten (10) years after the date of  
dissolution. The plan of distribution shall provide that the claims  
shall be paid in full and any ~~such~~ provision for payment made shall  
be made in full if there are sufficient ~~funds~~ assets. If there are  
insufficient ~~funds~~ assets, the plan shall provide that such the  
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~~ assets legally available therefor. Any remaining  
~~funds~~ assets 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.

E. As used in this section, the term "priority" does not refer  
either to the order of payments set forth in paragraphs 1 through 4  
of subsection A of this section or to the relative times at which  
any claims mature or are reduced to judgment.

SECTION 24. AMENDATORY 18 O.S. 1991, Section 1100.3, is amended to read as follows:

Section 1100.3

LIABILITY OF SHAREHOLDERS OF DISSOLVED CORPORATIONS

A. A shareholder of a dissolved corporation the assets of which were distributed pursuant to subsection A or B of Section ~~26~~ 1100.2 of this ~~act~~ title shall not be liable for any claim against the corporation in an amount in excess of ~~such~~ the shareholder's pro rata share of the claim or the amount ~~so~~ distributed to ~~him~~ the shareholder, whichever is less.

B. A shareholder of a dissolved corporation the assets of which were distributed pursuant to subsection A of Section ~~26~~ 1100.2 of this ~~act~~ title shall not be liable for any claim against the corporation on which an action, suit, or proceeding is not begun prior to the expiration of the period described in Section 1099 of ~~Title 18 of the Oklahoma Statutes~~ this title.

C. The aggregate liability of any shareholder of a dissolved corporation for claims against the dissolved corporation shall not exceed the amount distributed to ~~him~~ the shareholder in dissolution.

SECTION 25. AMENDATORY 18 O.S. 1991, Section 1133, as amended by Section 7, Chapter 69, O.S.L. 1996 (18 O.S. Supp. 1997, Section 1133), is amended to read as follows:

Section 1133.

CHANGE OF REGISTERED AGENT UPON WHOM PROCESS MAY BE SERVED

A. 1. Any foreign corporation which has qualified to do business in this state may change its registered agent and substitute therefor another registered agent by filing a certificate with the Secretary of State, acknowledged in accordance with the provisions of Section 1007 of this title, setting forth:

~~1.~~ a. the name and address of its registered agent designated in this state upon whom process directed to the corporation may be served; ~~2.~~ and

~~2.~~ b. a revocation of all previous appointments of agent for such purposes. ~~Such~~

2. The registered agent shall be either an individual residing in this state when appointed or a corporation authorized to transact business in this state.

B. Any individual or corporation designated by a foreign corporation as its registered agent for service of process may resign by filing with the Secretary of State a signed statement that ~~he or it~~ the agent is unwilling to continue to act as the registered agent of the corporation for service of process, including in the statement the post office address of the main or headquarters office of the foreign corporation. ~~Upon the expiration of thirty (30) days after the filing of the statement with the Secretary of State, the capacity of the individual or corporation, as registered agent, shall terminate, but the resignation shall not become effective until thirty (30) days after the statement is filed. The statement shall be acknowledged by the registered agent and shall contain a representation that written notice of resignation was given to the corporation at least thirty (30) days prior to the filing of the statement by mailing or delivering the notice to the corporation at its address given in the statement.~~

C. If any agent designated and certified as required by the provisions of Section 1130 of this title shall die, remove himself from this state or resign, then the foreign corporation for which the agent had been so designated and certified, within ten (10) days after the death, removal or resignation of its agent, shall substitute, designate and certify to the Secretary of State, the name of another registered agent for the purposes of the Oklahoma General Corporation Act, and all process, orders, rules and notices may be served on or given to the substituted agent with like effect.

SECTION 26. REPEALER 18 O.S. 1991, Section 1098, is hereby repealed.

SECTION 27. This act shall become effective November 1, 1998.

46-2-2766            KSM            (<time=system>)