STATE OF OKLAHOMA

1st Session of the 47th Legislature (1999)

2ND CONFERENCE COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL 684 By: Coffee of the Senate

and

Vaughn of the House

2ND CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to business entities; amending 18 O.S. 1991, Sections 552.2, 552.3, as last amended by Section 1, Chapter 334, O.S.L. 1997, 552.5, as last amended by Section 2, Chapter 334, O.S.L. 1997, 552.7, as last amended by Section 4, Chapter 334, O.S.L. 1997, 552.8, as last amended by Section 5, Chapter 334, O.S.L. 1997, and 552.9, as last amended by Section 6, Chapter 334, O.S.L. 1997 (18 O.S. Supp. 1998, Sections 552.3, 552.5, 552.7, 552.8 and 552.9), which relate to the Oklahoma Solicitation of Charitable Contributions Act; modifying definitions; modifying period for validity of registration; modifying provisions related to revocation; modifying required content for certain forms; prescribing formalities for execution and acknowledgment of certain registration instruments; modifying provisions related to information required from charitable organizations; deleting requirement for use of certain forms; modifying requirements for registration of certain professional solicitors; amending 18 O.S. 1991, Sections 1024, 1032, as amended by Section 6, Chapter 422, O.S.L. 1998, 1060, 1061, 1077, as last amended by Section 14, Chapter 422, O.S.L. 1998, 1081, as amended by Section 15, Chapter 422, O.S.L. 1998, 1082, as amended by Section 16, Chapter 422, O.S.L. 1998, 1086, 1090.2, as amended by Section 19, Chapter 422, O.S.L. 1998, 1090.3, as amended by Section 20, Chapter 422, O.S.L. 1998, 1097, 1100.2, as amended by Section 24, Chapter 422, O.S.L. 1998, 1130, as amended by Section 26, Chapter 422, O.S.L. 1998, 1133, as last amended by Section 27, Chapter 422, O.S.L. 1998 and 1140, as last amended by Section 9, Chapter 69, O.S.L. 1996 (18 O.S. Supp. 1998, Sections 1032, 1077, 1081, 1082, 1090.2, 1090.3, 1100.2, 1130, 1133 and 1140), which relate to the Oklahoma General Corporation Act; modifying provisions related to change of address or name of registered agents; modifying required content for registration of certain agents; modifying provisions related to redemption of corporate stock; modifying references; prescribing requirements related to election of certain persons; modifying provisions related to quorum and required vote for stock corporations; modifying notice provisions

related to amendment of certificate of incorporation; modifying provisions related to resolutions for merger or consolidation; authorizing terms in agreement governing merger or consolidation; modifying provisions related to content of certain agreement for merger or consolidation of certain entities; modifying definition; deleting requirement for certain proof of publication; modifying provisions for dissolution of certain corporate entities; modifying requirement for disclosure of certain address; modifying provisions related to reports of trade names; prescribing requirements for amendment of trade name reports; amending Section 6, Chapter 148, O.S.L. 1992, as last amended by Section 3, Chapter 145, O.S.L. 1997, Section 9, Chapter 148, O.S.L. 1992, as amended by Section 5, Chapter 366, O.S.L. 1993, Section 11, Chapter 148, O.S.L. 1992, as amended by Section 6, Chapter 366, O.S.L. 1993, Section 13, Chapter 148, O.S.L. 1992, Section 44, Chapter 148, O.S.L. 1992, Section 46, Chapter 148, O.S.L. 1992, as amended by Section 14, Chapter 69, O.S.L. 1996 and Section 47, Chapter 148, O.S.L. 1992 (18 O.S. Supp. 1998, Sections 2005, 2008, 2010, 2012, 2043, 2045 and 2046), which relate to the Oklahoma Limited Liability Company Act; modifying requirements related to legal names of limited liability companies; modifying provisions related to registration of limited liability companies; deleting requirements for certain articles of correction; modifying provisions related to registration of foreign limited liability companies; modifying provisions related to names of foreign limited liability companies; prescribing requirements for foreign limited liability companies after certain extraordinary events; amending 54 O.S. 1991, Sections 83, as amended by Section 66, Chapter 399, O.S.L. 1997, 303, as amended by Section 18, Chapter 69, O.S.L. 1996, 305, as amended by Section 20, Chapter 69, O.S.L. 1996, 305.1, as last amended by Section 21, Chapter 69, O.S.L. 1996, 309, as amended by Section 31, Chapter 422, O.S.L. 1998, 350, as last amended by Section 23, Chapter 69, O.S.L. 1996 and 353, as amended by Section 26, Chapter 69, O.S.L. 1996 (54 O.S. Supp. 1998, Sections 83, 303, 305, 305.1, 309, 350 and 353), which relate to the Oklahoma Revised Uniform Limited Partnership Act, modifying requirements for certain partnership certificates; prescribing procedure for filing of cancellation of fictitious name; modifying requirements related to certain partnership names; modifying provision related to specified office and agent for limited partnership; modifying certain execution requirements; modifying requirement related to content of certificate of limited partnership; modifying required content for certain registration; imposing requirements with respect to foreign limited partnerships after occurrence of certain extraordinary events; prescribing procedures for appointment of agents by foreign limited partnerships; amending 66 O.S. 1991, Section 17, which relates to certain contracts for the sale of railroad property; modifying provisions for record keeping; modifying certain fee; amending 74 O.S.

1991, Section 7009, as amended by Section 8, Chapter 103, O.S.L. 1993 (74 O.S. Supp. 1998, Section 7009), which relates to the Oklahoma State Employee Charitable Contribution Act; providing for refund of certain monies by Secretary of State; defining term; modifying terms; modifying requirements for certain charitable agencies; providing for codification; and providing an effective date.

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

SECTION 1. AMENDATORY 18 O.S. 1991, Section 552.2, is amended to read as follows:

Section 552.2 As used in this act:

1. "Person" means any individual, organization, group, association, partnership or corporation;

2. "Charitable organization" means any philanthropic, patriotic, eleemosynary, educational, social, civic, recreational, religious or any other person performing or purporting to perform acts beneficial to the public;

3. "Contribution" means the promise or grant of any money or property of any kind or value;

4. "Professional fund raiser" means any person who for compensation or other consideration plans, conducts or manages in this state the solicitation of contributions for or on behalf of any charitable organization or any other person, or who engages in the business of or holds himself out to persons in this state as independently engaged in the business of soliciting contributions for such purpose; ~~and~~

5. "Professional solicitor" means any person who is employed or retained for compensation or other consideration of any kind whatsoever by a professional fund raiser to solicit contributions in this state for or on behalf of any charitable organization or any other person; and

6. "Professional fund raising counsel" means an entity that, alone or through its employees and agents, provides services for compensation to a charitable organization in the solicitation of contributions, including, but not limited to, planning, managing, or preparing materials to be used in conjunction with any solicitation; provided, that the entity does not:

a. directly or indirectly solicit contributions alone or through its employees and agents, or

b. receive, have access to, or control any contribution generated by the solicitation activity.

SECTION 2. AMENDATORY 18 O.S. 1991, Section 552.3, as last amended by Section 1, Chapter 334, O.S.L. 1997 (18 O.S. Supp. 1998, Section 552.3), is amended to read as follows:

Section 552.3 No charitable organization, except those specifically exempt under Section 552.4 of this title, shall solicit or accept contributions from any person in this state by any means whatsoever until ~~such~~ the charitable organization shall have registered with the Office of the Secretary of State and filed information, as required by this act, on forms approved by that office. At the time of ~~such~~ registration, each charitable organization shall pay a fee of Fifteen Dollars ($15.00). ~~Such registration~~ Registration shall be valid for a period of one (1) year from the date of filing with the Secretary of State, and shall be subject to annual renewal. This registration shall not be deemed to constitute endorsement by the state or by the Secretary of State of the charitable organizations so registered~~, and that office shall immediately revoke the registration of any person who directly or indirectly misrepresents the effect of registration hereunder to any donor or prospective donor~~. The information so filed shall be available to the general public as a matter of public record. The forms containing ~~such~~ the information shall be ~~sworn to~~ signed and

acknowledged by a party duly authorized to sign on behalf of the charitable organization and shall include the following:

1. The legal name ~~under which~~ of the charitable organization ~~intends to solicit or accept contributions, and the identity of the charitable organization by or for whom the solicitation is to be conducted~~, any other name the organization may be identified as or known as, and any distinctive names the organization uses for purposes of public solicitation;

2. The street address and the mailing address, if different, of the charitable organization ~~and the names and addresses of officers, directors, trustees and executive personnel~~;

3. The name and street address of:

a. each officer, including each principal salaried executive staff officer,

b. each director,

c. each trustee,

d. each person who will have custody of the contributions, and

e. each person responsible for the distribution of funds collected;

4. The purposes for which the contributions solicited or accepted are to be used; provided, however, no contribution or any portion thereof shall inure to the private benefit of any voluntary solicitor;

~~4.~~ 5. A copy of Internal Revenue Form 990 as filed by the charitable organization for the most ~~recent tax~~ recently completed fiscal year; or, for the initial registration of a newly formed organization, a copy of a letter from the Internal Revenue Service, or other evidence, showing the tax exempt status of the charitable organization;

~~5. The person who will have custody of the contributions;~~

~~6. The persons responsible for the distribution of funds collected;~~

~~7.~~ 6. The period of time during which ~~such~~ the solicitation is to be conducted;

~~8.~~ 7. A description of the specific method or methods of solicitation ~~in such detail as may from time to time be determined by the Secretary of State~~;

~~9.~~ 8. Whether ~~such~~ the solicitation is to be conducted by voluntary unpaid solicitors, by paid solicitors, or both;

~~10.~~ 9. If in whole or in part by paid solicitors, the name and address of each professional fund raiser supplying ~~such~~ the solicitors, which includes any professional fund raising counsel who is acting or has agreed to act on behalf of the organization; the basis of payment and the nature of the arrangement, including a copy of the contract or other agreement between the charitable organization and the professional fund raiser or fund raising counsel relating to financial compensation or profit to be derived by the fund raisers or fund raising counsel, the specific amount or percentage of compensation, or property of any kind or value to be paid or paid to the professional fund raiser, the percentage value of ~~such~~ compensation as compared ~~(a)~~:

a. to the total contributions received, and ~~(b)~~

b. to the net amount of the total contributions received; and

~~11. Such additional~~ 10. Additional information as may be deemed necessary and appropriate by the Secretary of State in the public interest or for the specific protection of contributors.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 552.3a of Title 18, unless there is created a duplication in numbering, reads as follows:

Every registration instrument required to be filed with the Secretary of State pursuant to the Oklahoma Solicitation of

Charitable Contributions Act shall be executed and acknowledged as follows:

1. By formal acknowledgment of the person or persons signing the instrument that it is that person's act and deed or the act and deed of the organization, and that the facts stated therein are true. 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 if that person has a seal of office, that person shall affix it to the instrument; or

2. By signature, without more, of the person or persons signing the instrument, in which case the signature or signatures shall constitute the affirmation or acknowledgment of the signatory, under penalties of perjury, that the instrument is that person's act and deed or the act and deed of the organization, and that the facts stated therein are true.

SECTION 4. AMENDATORY 18 O.S. 1991, Section 552.5, as last amended by Section 2, Chapter 334, O.S.L. 1997 (18 O.S. Supp. 1998, Section 552.5), is amended to read as follows:

Section 552.5 A. ~~On or before March 31 of each year every~~ Every charitable organization subject to the provisions of this act which has received contributions during the previous calendar year shall file a statement with the Secretary of State, executed and signed by a party duly authorized to act on behalf of the charitable organization, which contains the ~~following~~ most recent information ~~in the manner hereinbefore provided and on forms to be provided by the Office of the Secretary of State~~, as follows:

1. The name, street address, and telephone number of the charitable organization;

2. The gross amount of the contributions pledged or collected;

~~2.~~ 3. The gross amount ~~thereof~~ given or to be given to the charitable purpose represented;

~~3.~~ 4. The aggregate amount paid and to be paid for the expenses of ~~such~~ solicitation; and

~~4.~~ 5. The aggregate amount paid to and to be paid to professional fund raisers and solicitors.

B. ~~A charitable organization which maintains its books on other than a calendar year basis may upon application to the Office of the Secretary of State be permitted to file its report within ninety (90) days after the close of its fiscal year. In addition, that office may require that within ninety (90) days after the close of any special period of solicitation the charitable organization conducting such solicitation shall file a special report of the information specified in this section for such special period of solicitation. Such report when filed shall be a public record in the Office of the Secretary of State~~ The financial statement prescribed in subsection A of this section shall be submitted with the initial registration, and with each annual renewal, thereafter.

SECTION 5. AMENDATORY 18 O.S. 1991, Section 552.7, as last amended by Section 4, Chapter 334, O.S.L. 1997 (18 O.S. Supp. 1998, Section 552.7), is amended to read as follows:

Section 552.7 No person shall act as a professional fund raiser for any charitable organization, including those organizations listed under Section 552.4 of this title, until the person has first registered with the Office of the Secretary of State. Applications for ~~such~~ registrations ~~shall be in writing, under oath, in the form prescribed by that office~~, signed and acknowledged by a party duly authorized to act on behalf of the fund raiser, shall state the full, legal name of the professional fund raiser, the street address of the principal place of business of the fund raiser, the full, legal names and street addresses of the charitable organizations with which it has entered into contracts or agreements, and shall be accompanied by an annual fee in the sum of Fifty Dollars ($50.00). The applicant shall, at the time of making application, file with

~~and have approved by~~ the Secretary of State a bond in which the applicant shall be the principal obligor, in the sum of Two Thousand Five Hundred Dollars ($2,500.00), with one or more sureties whose liability in the aggregate as ~~such~~ sureties shall at least equal ~~the said~~ that sum. The ~~said~~ bond shall run to the Secretary of State for the use of the state and to any person, including a charitable organization, who may have a cause of action against the obligor of ~~said~~ the bond for any malfeasance or misfeasance of ~~such~~ the obligor or any professional solicitor employed by him or her in the conduct of ~~such~~ the solicitation. Registration ~~when affected~~ shall be valid for a period of one (1) year from the date of filing with the Secretary of State, ~~expiring on the thirty-first day of March,~~ and may be renewed annually upon the filing of a renewal application accompanied by the bond and fee prescribed herein ~~for additional one-year periods~~.

SECTION 6. AMENDATORY 18 O.S. 1991, Section 552.8, as last amended by Section 5, Chapter 334, O.S.L. 1997 (18 O.S. Supp. 1998, Section 552.8), is amended to read as follows:

Section 552.8 All contracts or other agreements entered into by ~~such~~ professional fund raisers and charitable organizations shall be in writing and true and correct copies thereof shall be kept on file in the offices of the charitable organization and the professional fund raiser for a period of three (3) years from the date of solicitation of contributions provided for therein actually commences. ~~Such~~ These contracts shall be available for inspection and examination by the Office of the Secretary of State and other authorized agencies. At least one copy of every ~~such~~ contract or other agreement shall be on file at all times in that office and shall be available to the general public as a matter of public record. ~~The Secretary of State may require the use of standard contract forms and no contract shall be valid unless prior approval thereof is given by that office.~~

SECTION 7. AMENDATORY 18 O.S. 1991, Section 552.9, as last amended by Section 6, Chapter 334, O.S.L. 1997 (18 O.S. Supp. 1998, Section 552.9), is amended to read as follows:

Section 552.9 Every professional solicitor employed or retained by a professional fund raiser required to register shall, before accepting employment by ~~such~~ the professional fund raiser, register with the Office of the Secretary of State. ~~Application~~ An application for ~~such~~ registration, signed by the solicitor and acknowledged, shall state the full, legal name and street address of the professional fund raiser that employs the solicitor ~~be in writing, under oath, in the form prescribed by that office,~~ and shall be accompanied by a fee in the sum of Ten Dollars ($10.00). ~~Such registration when affected~~ Registration shall be for a period of one (1) year from the date of filing by the Secretary of State, ~~expiring on the thirty-first day of March,~~ and may be renewed annually upon the filing of a renewal application accompanied by a payment of the fee prescribed herein ~~for additional one-year periods~~.

SECTION 8. AMENDATORY 18 O.S. 1991, Section 1024, is amended to read as follows:

Section 1024.

CHANGE OF ADDRESS OR NAME OF REGISTERED AGENT

A. A registered agent may change the address of the registered office of the corporation or corporations for which he or she is the registered agent to another address in this state by filing with the Secretary of State a certificate in the name of each affected corporation, executed and acknowledged by ~~such~~ the registered agent, setting forth the name of the corporation represented by ~~such~~ the registered agent, ~~the address at which the registered office for the corporation has been maintained,~~ the new address to which the registered office will be changed ~~as of a given date and~~ at which

~~new address such~~ the registered agent will ~~thereafter~~ maintain the registered office for the corporation recited in the certificate.

B. In the event of a change of name of any person or corporation acting as registered agent in this state, ~~such~~ the registered agent shall file with the Secretary of State a certificate in the name of each affected corporation, executed and acknowledged by ~~such~~ the registered agent, setting forth the new name of ~~such~~ the registered agent, the name of ~~such~~ the registered agent before it was changed, the name of the corporation represented by ~~such~~ the registered agent, and the address ~~at which such registered agent has maintained~~ of the registered office for the corporation.

SECTION 9. AMENDATORY 18 O.S. 1991, Section 1032, as amended by Section 6, Chapter 422, O.S.L. 1998 (18 O.S. Supp. 1998, 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 voting powers, full or limited, or no voting powers, and 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 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 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 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 the facts shall operate upon the voting powers, designations, preferences, rights, and qualifications, limitations, or restrictions of 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 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. ~~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.~~ Any 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, immediately following any redemption, the corporation shall have outstanding one or more shares or one or more classes or series of stock, which share, or shares together, shall have full voting powers. 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 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 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 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 any adjustments, as shall be stated in the certificate of incorporation or in the resolution or resolutions providing for the issue of 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, conditions, and times as shall be stated in the certificate of incorporation or in the resolution or resolutions providing for the issue of the stock adopted by the board of directors as provided for in subsection A of this section, payable in preference to, or in 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 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 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 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 the price or prices or at the rate or rates of exchange, and with adjustments as shall be stated in the certificate of incorporation or in the resolution or resolutions providing for the issue of 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 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 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 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 the preferences or rights. Within a reasonable time after the issuance or transfer of uncertificated stock, 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 the preferences 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 the resolution or resolutions and the number of shares of stock of the class or series 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 resolution or resolutions, the number of shares of stock of any series to which

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 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 class or series are outstanding, either because none were issued or because no issued shares of any 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 the class or series are outstanding, and that none will be issued subject to the certificate of designations previously filed with respect to the class or series, may be executed, acknowledged, and filed in accordance with the provisions of Section 1007 of this title and, when 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 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 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 resolutions as authorized by this subsection.

SECTION 10. AMENDATORY 18 O.S. 1991, Section 1060, is amended to read as follows:

Section 1060.

VOTING RIGHTS OF MEMBERS OF NONSTOCK

CORPORATIONS; QUORUM; PROXIES

A. The provisions of Sections ~~56~~ 1056 through ~~59~~ 1059 and ~~61~~ 1061 of this ~~act~~ title shall not apply to corporations not authorized to issue stock.

B. Unless otherwise provided for in the certificate of incorporation of a nonstock corporation, each member shall be entitled at every meeting of members to one vote in person or by proxy, but no proxy shall be voted on after three (3) years from its date, unless the proxy provides for a longer period.

C. Unless otherwise provided for in the Oklahoma General Corporation Act, the certificate of incorporation or bylaws of a nonstock corporation may specify the number of members having voting power who shall be present or represented by proxy at any meeting in order to constitute a quorum for, and the votes that shall be necessary for, the transaction of any business. In the absence of such specification in the certificate of incorporation or bylaws of a nonstock corporation~~,~~:

1. ~~one-third~~ One-third (1/3) of the members of ~~such~~ the corporation shall constitute a quorum at a meeting of ~~such~~ the members;

2. In all matters other than the election of the governing body of the corporation, ~~and~~ the affirmative vote of a majority of ~~such~~ the members present in person or represented by proxy at the meeting and entitled to vote on the subject matter shall be the act of the members, unless the vote of a greater number is required by the provisions of the Oklahoma General Corporation Act, the certificate of incorporation or bylaws; and

3. Members of the governing body shall be elected by a plurality of the votes of the members of the corporation present in person or represented by proxy at the meeting and entitled to vote.

D. If the election of the governing body of any nonstock corporation shall not be held on the day designated by the bylaws, the governing body shall cause the election to be held as soon thereafter as convenient. The failure to hold such an election at the designated time shall not work any forfeiture or dissolution of the corporation, but the district court may summarily order such an election to be held upon the application of any member of the corporation. At any election pursuant to such order the persons entitled to vote in such election who shall be present at such meeting, either in person or by proxy, shall constitute a quorum for such meeting, notwithstanding any provision of the certificate of incorporation or the bylaws of the corporation to the contrary.

SECTION 11. AMENDATORY 18 O.S. 1991, Section 1061, is amended to read as follows:

Section 1061.

QUORUM AND REQUIRED VOTE FOR STOCK CORPORATIONS

Subject to the provisions of the Oklahoma General Corporation Act, in respect of the vote that shall be required for a specified action, the certificate of incorporation or bylaws of any

corporation authorized to issue stock may specify the number of shares and/or the amount of other securities having voting power the holders of which shall be present or represented by proxy at any meeting in order to constitute a quorum for, and the votes that shall be necessary for, the transaction of any business, but in no event shall a quorum consist of less than one-third (1/3) of the shares entitled to vote at the meeting, except that, where a separate vote by a class or series or classes or series is required, a quorum shall consist of no less than one-third (1/3) of the share of that class or series or classes or series. In the absence of such specification in the certificate of incorporation or bylaws of the corporation:

1. A majority of the shares entitled to vote, present in person or represented by proxy, shall constitute a quorum at a meeting of shareholders;

2. In all matters other than the election of directors, the affirmative vote of the majority of shares present in person or represented by proxy at the meeting and entitled to vote on the subject matter shall be the act of the shareholders;

3. Directors shall be elected by a plurality of the votes of the shares present in person or represented by proxy at the meeting and entitled to vote on the election of directors; and

4. Where a separate vote by a class or series or classes or series is required, a majority of the outstanding shares of such class or series or classes or series, present in person or represented by proxy, shall constitute a quorum entitled to take action with respect to that vote on that matter and the affirmative vote of the majority of shares of such class or series or classes or series present in person or represented by proxy at the meeting shall be the act of such class or series or classes or series.

SECTION 12. AMENDATORY 18 O.S. 1991, Section 1077, as last amended by Section 14, Chapter 422, O.S.L. 1998 (18 O.S. Supp. 1998, 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 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, provisions as may be necessary to effect the change, exchange, reclassification, subdivision, combination, or cancellation. In particular, and without limitation upon 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,

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

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 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,

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 the amendment or directing that the amendment proposed be considered at the next annual meeting of shareholders. 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 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 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 the class, increase or decrease the par value of the shares of the class, or alter or change the powers, preferences, or special rights of the shares of 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 the class or classes of stock or which was adopted prior to the issuance of any shares of 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 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 upon notice stating the purpose thereof ~~and given in accordance with the provisions of Section 1067 of this title~~, not earlier than fifteen (15) days and not later than sixty (60) days from the meeting at which the resolution has been passed, a majority of all the members of the governing body shall vote in favor of 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 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 the corporation in which event only one meeting of the governing body thereof shall be necessary, and the proposed amendment shall be submitted to the members or to any specified class of members of 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 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 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 a greater vote shall not be altered, amended, or repealed except by 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 13. AMENDATORY 18 O.S. 1991, Section 1081, as amended by Section 15, Chapter 422, O.S.L. 1998 (18 O.S. Supp. 1998, 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 <u>and declaring its advisability</u>. The agreement shall state:

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

2. The mode of carrying the same into effect;

3. In the case of a merger, 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 amendments or changes are desired, a statement that the certificate of incorporation of the surviving corporation shall be its certificate of incorporation of the surviving or resulting corporation;

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

5. The manner of converting the shares of each of the constituent corporations into shares or other securities of the corporation surviving or resulting from the merger or consolidation, and, if any shares of any of the constituent corporations are not to be converted solely into shares or other securities of the surviving or resulting corporation, the cash, property, rights, or securities of any other corporation which the holders of the shares are to receive in exchange for or upon conversion of 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. 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 the agreement; provided, that the manner in which 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. <u>The terms of the agreement</u>

may require that the agreement be submitted to the shareholders whether or not the board of directors determines at any time subsequent to declaring its advisability that the agreement is no longer advisable and recommends that the shareholders reject it. 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 the address 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, 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 name and state of incorporation of each of the constituent corporations;

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

3. The name of the surviving or resulting corporation;

4. In the case of a merger, 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 amendments or changes are desired, a statement that the certificate of incorporation of the surviving corporation shall be its certificate of incorporation;

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

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

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

D. Any agreement of merger or consolidation may contain a provision that at any time prior to the 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 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; provided, that an amendment made subsequent to the adoption of the agreement by the shareholders of any constituent corporation shall not:

1. Alter or change the amount or kind of shares, securities, cash, property, 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 the constituent corporation;

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

3. Alter or change any of the terms and conditions of the agreement if an alteration or change would adversely affect the holders of any class or series thereof of the constituent 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 agreement of merger does not amend in any respect the certificate of incorporation of the constituent corporation;

2. Each share of stock of 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 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 the plan do not exceed twenty percent (20%) of the shares of common stock of 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 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:

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. Filing shall constitute a representation by the person who executes the certificate that the facts stated in the certificate remain true immediately prior to 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 this subparagraph 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 14. AMENDATORY 18 O.S. 1991, Section 1082, as amended by Section 16, Chapter 422, O.S.L. 1998 (18 O.S. Supp. 1998, 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 the other state or states or of the District permit a corporation of 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 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 terms and conditions of the merger or consolidation;

2. The mode of carrying the same into effect;

3. The manner of converting the shares of each of the constituent corporations into shares or other securities of the corporation surviving or resulting from the merger or consolidation and, if any shares of any of the constituent corporations are not to be converted solely into shares or other securities of the surviving or resulting corporation, the cash, property, rights, or securities of any other corporation which the holder of the shares are to receive in exchange for, or upon conversion of, 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. 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. 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 the agreement; provided, that the manner in which the facts shall operate upon the terms of the agreement is clearly and expressly set forth in the agreement of merger or consolidation. 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 name and state of incorporation of each of the constituent corporations;

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

3. The name of the surviving or resulting corporation;

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

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

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

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

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

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

D. If the corporation surviving or resulting from the merger or consolidation is to be governed by the laws of the District of Columbia or any state 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 suit or other proceedings and shall specify the address to which a copy of process shall be mailed by the Secretary of State. In the event of service upon the Secretary of State in accordance with the provisions of this subsection, the Secretary of

State shall immediately notify the surviving or resulting corporation thereof by letter, certified mail, return receipt requested, directed to the surviving or resulting corporation at the address specified unless the surviving or resulting corporation shall have designated in writing to the Secretary of State a different address for this purpose, in which case it shall be mailed to the last address so designated. The notice shall 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. 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~~ subsections C and 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 15. AMENDATORY 18 O.S. 1991, Section 1086, is amended to read as follows:

Section 1086.

MERGER OR CONSOLIDATION OF DOMESTIC STOCK AND NONSTOCK CORPORATIONS

A. Any one or more nonstock corporations of this state, whether or not organized for profit, may merge or consolidate with one or more stock corporations of this state, whether or not organized for profit. 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, pursuant to an agreement of merger or consolidation, as the case may be, complying and approved in accordance with the provisions of this section. The surviving constituent corporation or a new corporation may be organized for profit or not organized for profit and may be a stock corporation or a nonstock corporation.

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

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

2. the mode carrying the same into effect;

3. such other provisions or facts required or permitted by the Oklahoma General Corporation Act to be stated in the certificate of incorporation as can be stated in the case of a merger or consolidation, stated in such altered form as the circumstances of the case require;

4. the manner of converting the shares of stock of a stock corporation and the interests of the members of nonstock corporation into shares or other securities of a stock corporation or membership interests of a nonstock corporation surviving or resulting from such

merger or consolidation, and if any shares of any such stock corporation or membership interests of any such nonstock corporation are not to be converted solely into shares or other securities of the stock corporation or membership interests of the nonstock corporation surviving or resulting from such merger or consolidation, the cash, property, rights or securities of any other corporation or entity which the holders of shares of any such stock corporation or membership interests of any such nonstock corporation are to receive in exchange for, or upon conversion of such shares or membership 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 or other securities of any stock corporation or membership interests of any nonstock corporation surviving or resulting from such merger or consolidation; and

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

C. In a merger or consolidation provided for in this section, the interests of members of a constituent nonstock corporation may be treated in various ways so as to convert such interests into interests of value, other than shares of stock, in the surviving or resulting stock corporation or into shares of stock in the surviving or resulting stock corporation, voting or nonvoting, or into creditor interests or any other interests of value equivalent to their membership interests in their nonstock corporation. The voting rights of members of a constituent nonstock corporation need not be considered an element of value in measuring the reasonable equivalence of the value of the interests received in the surviving or resulting stock corporation by members of a constituent nonstock corporation, nor need the voting rights of shares of stock in a constituent stock corporation be considered as an element of value in measuring the reasonable equivalence of the value of the interests in the surviving or resulting nonstock corporations

received by shareholders of a constituent stock corporation, and the voting or nonvoting shares of a stock corporation may be converted into voting or nonvoting regular, life, general, special or other type of membership, however designated, creditor interests or participating interests, in the nonstock corporation surviving or resulting from such merger or consolidation of a stock corporation and a nonstock corporation. Any of the terms of the agreement of merger or consolidation may be made dependent upon facts ascertainable outside of such agreement, provided that the manner in which such facts shall operate upon the terms of the agreement is clearly and expressly set forth in the agreement of merger or consolidation.

D. The agreement, required by subsection B of this section in the case of each constituent stock corporation, shall be adopted, approved, certified, executed and acknowledged by each constituent corporation in the same manner as is provided for in Section 1081 of this title and, in the case of each constituent nonstock corporation, shall be adopted, approved, certified, executed and acknowledged by each of said constituent corporations in the same manner as is provided for in Section 1084 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 of stock corporations of this state. Insofar as they may be applicable, the provisions of paragraphs 1 through 7 of subsection C of Section 1081 of this title shall apply to a merger under this section.

E. The provisions of subsection E of Section 1081 of this title shall apply to a merger pursuant to the provisions of this section, if the surviving corporation is a corporation of this state. The provisions of ~~subsection~~ subsections C and D of Section 1081 of this title shall apply to any constituent stock corporation participating in a merger or consolidation pursuant to the provisions of this

section. The provisions of subsection F of Section 1081 of this title shall apply to any constituent stock corporation participating in 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 stock corporation, if the charitable status of such nonstock corporation would thereby be lost or impaired; but a stock corporation may be merged into a charitable nonstock corporation which shall continue as the surviving corporation.

SECTION 16. AMENDATORY 18 O.S. 1991, Section 1090.2, as amended by Section 19, Chapter 422, O.S.L. 1998 (18 O.S. Supp. 1998, Section 1090.2), is amended to read as follows:

Section 1090.2

MERGER OR CONSOLIDATION OF DOMESTIC CORPORATION AND BUSINESS ENTITY

A. Any one or more corporations of this state may merge or consolidate with one or more 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 the other state or states or the District of Columbia forbid the merger or consolidation. A corporation or corporations and one or more business entities may merge with or into a corporation, which may be any one of the corporations, or they may merge with or into a business entity, which may be any one of the business entities, or they may consolidate into a new corporation or business entity formed by the consolidation, which shall be a corporation or business entity of this state or any other state of the United States, or the District of Columbia, which permits 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 corporation and 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 ownership interests of each business entity into shares, ownership interests, or other securities of the entity surviving or resulting from the merger or consolidation, and if any shares of any corporation or any ownership interests of any business entity are not to be converted solely into shares, ownership interests, or other securities of the entity surviving or resulting from 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 ownership interests are to receive in exchange for, or upon conversion of, the shares or 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, ownership interests or other securities of the entity surviving or resulting from the merger or consolidation; and

4. 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 business entity. Any of the terms of the agreement of merger or consolidation may be made dependent upon facts ascertainable outside of the agreement; provided, that the manner in which 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 this title and, in the case of the business entities, in accordance with their 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 this title 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 business entity may file a certificate of merger or consolidation, executed in accordance with Section 1007 of this title if the surviving or resulting entity is a corporation, or by a person authorized to act for the business entity, if the surviving or resulting entity is a 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 business entity;

4. In the case of a merger in which a corporation is the surviving entity, 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 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. In the case of a consolidation in which a business entity other than a corporation is the resulting entity, that the charter of the resulting entity shall be as set forth in an attachment to the certificate;

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

~~7.~~ 8. 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 business entity; and

~~8.~~ 9. 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 business entity of this state, as well as for enforcement of any obligation of the surviving or resulting corporation or 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 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 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 business entity by a letter, sent by certified mail with return receipt requested, directed to the surviving or resulting corporation or business entity at its specified address, unless the surviving or resulting corporation or business entity shall have designated in writing to the Secretary of State a different address for that purpose, in which case it shall be mailed to the last address 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 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 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 this information longer than five (5) years from the date of receipt of the service of process by the Secretary of State.

E. Subsections C, D, E, F and G of Section 1081 of this title and Sections 1088 through 1090 and 1127 of this title, insofar as they are applicable, shall apply to mergers or consolidations between corporations and business entities.

SECTION 17. AMENDATORY 18 O.S. 1991, Section 1090.3, as amended by Section 20, Chapter 422, O.S.L. 1998 (18 O.S. Supp. 1998, Section 1090.3), is amended to read as follows:

Section 1090.3

BUSINESS COMBINATIONS WITH INTERESTED SHAREHOLDERS

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

1. Prior to 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 consummation of the transaction which resulted in the person becoming an interested shareholder, the interested shareholder owned of record or beneficially at least eighty-five percent (85%) of the outstanding voting stock of the corporation at the time the transaction commenced, excluding for purposes of determining 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. At or subsequent to such 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 two-thirds (2/3) of 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 corporation's original certificate of incorporation contains a provision expressly electing not to be governed by this section;

2. 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. 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; provided that, in addition to any other vote required by law, an amendment to the certificate of incorporation or bylaws must be approved by the affirmative vote of a majority of the outstanding voting stock of the corporation.

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 the amendment and shall not apply to any business combination between a corporation and any person who became an interested

shareholder of the corporation on or prior to the adoption. A bylaw amendment adopted pursuant to this paragraph shall not be further amended by the board of directors;

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

a. listed on a national securities exchange,

b. authorized for quotation on 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 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 the person, have been an interested shareholder but for the inadvertent acquisition;

6. a. 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:

(a) was not an interested shareholder during the previous three (3) years, 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 the directors by a majority of the directors.

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

(1) a share acquisition pursuant to Section 1090.1 of 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 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 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 of this section.

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 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 an interested shareholder prior to the effective date of the amendment.

D. As used in this section:

1. "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. "Associate", when used to indicate a relationship with any person, means:

a. any corporation, partnership, unincorporated association, or other entity of which the person is a director, officer, or partner or is the owner, of record or beneficially of twenty percent (20%) or more of any class of the voting stock of the corporation,

b. any trust or other estate in which the person has a beneficial interest of at least twenty percent (20%) or as to which such person serves as trustee or in a similar fiduciary capacity, and

c. any relative or spouse of the person, or any relative of the spouse, who has the same residence as the person;

3. "Business combination", when used in reference to any corporation and any interested shareholder of 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<u>, partnership, unincorporated association, or other entity</u> if the merger or consolidation is caused by the interested shareholder and, as a result of the merger or consolidation subsection A of this section is not applicable to the surviving 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 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 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 the corporation or any subsidiary which securities were outstanding prior to the time that the interested shareholder became 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 the corporation or any subsidiary which security is distributed, pro rata, to all holders of a class or series of stock of the corporation subsequent to the time the interested shareholder became an interested shareholder, or

(4) pursuant to an exchange offer by the corporation to purchase stock made on the same terms to all holders of the stock;

(5) any issuance or transfer of stock by the corporation; provided, however, that in no case under divisions (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 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 the outstanding voting stock, of the corporation or of any 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 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 this title;

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 is the owner of twenty percent (20%) or more of the outstanding voting stock of any corporation, partnership, unincorporated association or other entity shall be presumed to have control of 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 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 the entity;

5. a. "Interested shareholder" means:

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

(a) is the owner of fifteen percent (15%) or more of the outstanding voting stock of the corporation, or

(b) is an affiliate or associate of the corporation and was 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, and

(2) the affiliates and associates of the person.

b. "Interested shareholder" shall not mean:

(1) any person who:

(a) owned 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 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 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 the person shall be an interested shareholder if thereafter 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 the person.

c. 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 by the person through application of paragraph 8 of this subsection, but shall not include any other unissued stock of the corporation which may be issuable pursuant to any agreement, arrangement, or understanding, or upon exercise of conversion rights, warrants, or options, or otherwise;

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 18. AMENDATORY 18 O.S. 1991, Section 1097, is amended to read as follows:

Section 1097.

DISSOLUTION OF NONSTOCK CORPORATION; PROCEDURE

A. Whenever it shall be desired to dissolve any corporation having no capital stock, the governing body shall perform all the acts necessary for dissolution which are required by the provisions of Section 1096 of this title to be performed by the board of directors of a corporation having capital stock. If the members of a corporation having no capital stock are entitled to vote for the election of members of its governing body, they shall perform all the acts necessary for dissolution which are required by the provisions of Section 1096 of this title to be performed by the shareholders of a corporation having capital stock. If there is no member entitled to vote thereon, the dissolution of the corporation shall be authorized at a meeting of the governing body, upon the adoption of a resolution to dissolve by the vote of a majority of members of its governing body then in office. In the event of the dissolution of a not for profit corporation, a notice of dissolution shall be published one (1) time in a newspaper having general circulation in the county in which the principal place of business of such corporation is located. ~~Proof of such publication shall be filed in the Office of the Secretary of State.~~ In all other respects, the method and proceedings for the dissolution of a corporation having no capital stock shall conform as nearly as may be to the proceedings prescribed by the provisions of Section 1096 of this title for the dissolution of corporations having capital stock.

B. If a corporation having no capital stock has not commenced the business for which the corporation was organized, a majority of the governing body or, if none, a majority of the incorporators may surrender all of the corporation rights and franchises by filing in the Office of the Secretary of State a certificate, executed and acknowledged by a majority of the incorporators or governing body, conforming as nearly as may be to the certificate prescribed by Section 1095 of this title.

SECTION 19. AMENDATORY 18 O.S. 1991, Section 1100.2, as amended by Section 24, Chapter 422, O.S.L. 1998 (18 O.S. Supp. 1998, 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 1100.1 of this title shall:

a. pay the claims made and not rejected in accordance with subsection A of Section 1100.1 of this title;

b. post the security offered and not rejected pursuant to paragraph 2 of subsection B of Section 1100.1 of this title;

c. post any security ordered by the district court in any proceeding under subsection C of Section 1100.1 of this title; and

d. pay or make provision for all other claims that are mature, known, and uncontested or that have been finally determined to be owing by the corporation or successor entity.

2. Claims or obligations shall be paid in full and any provision for payment shall be made in full if there are sufficient assets. If there are insufficient assets, 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 assets legally available therefor. Any remaining assets shall be distributed to the shareholders of the dissolved corporation; provided, however, that 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 1100.1 of this title. In the absence of actual fraud, the judgment of the directors of the dissolved corporation or the governing persons of 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 1100.1 of this title shall, prior to the expiration of the period described in Section 1099 of this title, adopt a plan of distribution pursuant to which the dissolved corporation or successor entity ~~pays or makes reasonable provision to pay all claims and obligations, including all contingent, conditional, or unmatured claims known to the corporation or the 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~~:

1. Shall pay or make reasonable provision to pay all claims and obligations, including all contingent, conditional, or unmatured contractual claims known to the corporation or the successor entity;

2. 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; and

3. Shall make provision as will be reasonably likely to be sufficient to provide compensation for claims that have not been

made known to the corporation or successor entity or that have not arisen but that, based on facts known to the corporation or successor entity, are likely to arise or to become known to the corporation or successor entity 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 provision for payment made shall be made in full if there are sufficient assets. If there are insufficient assets, the plan shall provide that 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 assets legally available therefor. Any remaining 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 1100.1 of this 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 20. AMENDATORY 18 O.S. 1991, Section 1130, as amended by Section 26, Chapter 422, O.S.L. 1998 (18 O.S. Supp. 1998, Section 1130), is amended to read as follows:

Section 1130.

FOREIGN CORPORATIONS; DEFINITION; QUALIFICATION TO DO BUSINESS IN STATE; PROCEDURE

A. As used in the Oklahoma General Corporation Act, the words "foreign corporation" mean a corporation organized pursuant to the laws of any jurisdiction other than this state.

B. No foreign corporation shall do any business in this state, through or by branch offices, agents or representatives located in this state, until it shall have paid to the Secretary of State of this state the fees prescribed in Section 1142 of this title and shall have filed with the Secretary of State:

1. A certificate issued by an authorized officer of the jurisdiction of its incorporation evidencing its corporate existence. If such certificate is in a foreign language, a translation thereof, under oath of the translator, shall be attached thereto;

2. A statement executed by an authorized officer of the corporation and acknowledged in accordance with the provisions of Section 1007 of this title, setting forth:

a. the mailing address of the corporation's principal place of business, wherever located,

b. the name and street address of its additional registered agent in this state, if any, which agent shall be either an individual resident in this state when appointed or another corporation, limited liability company, or limited partnership authorized to transact business in this state,

c. the aggregate number of its authorized shares itemized by classes, par value of shares, shares without par value, and series, if any, within any classes authorized, unless it has no authorized capital,

d. a statement, as of a date not earlier than six (6) months prior to the filing date, of the assets and liabilities of the corporation,

e. the business it proposes to do in this state and a statement that it is authorized to do that business in the jurisdiction of its incorporation, and

f. a statement of the maximum amount of capital such corporation intends and expects to invest in the state at any time during the current fiscal year. "Invested capital" is defined as the value of the maximum amount of funds, credits, securities and property of whatever kind existing at any time during the fiscal year in the State of Oklahoma and used or employed by such corporation in its business carried on in this state.

C. The Secretary of State, upon payment to the Secretary of State of the fees prescribed in Section 1142 of this title, shall issue a sufficient number of certificates under the hand and official seal of the Secretary of State, evidencing the filing of the statement required by the provisions of subsection B of this section. The certificate of the Secretary of State shall be prima facie evidence of the right of the corporation to do business in this state; provided that the Secretary of State shall not issue such certificate unless the name of the corporation is such as to distinguish it upon the records of the Office of the Secretary of State in accordance with the provisions of Section 1141 of this title.

D. A foreign corporation, upon receiving a certificate from the Secretary of State, shall enjoy the same rights and privileges as, but not greater than, a corporation organized under the laws of this state for the purposes set forth in the statement filed by the corporation with the Secretary of State pursuant to which such certificate is issued and, except as otherwise provided in the Oklahoma General Corporation Act, shall be subject to the same duties, restrictions, penalties and liabilities now or hereafter imposed upon a corporation organized under the laws of this state with like purpose and of like character.

SECTION 21. AMENDATORY 18 O.S. 1991, Section 1133, as last amended by Section 27, Chapter 422, O.S.L. 1998 (18 O.S. Supp. 1998, 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:

a. the name and street address of its registered agent designated in this state upon whom process directed to the corporation may be served, and

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

2. The registered agent shall be either an individual residing in this state when appointed or a corporation, limited liability company, or limited partnership 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 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, 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 22. AMENDATORY 18 O.S. 1991, Section 1140, as last amended by Section 9, Chapter 69, O.S.L. 1996 (18 O.S. Supp. 1998, Section 1140), is amended to read as follows:

Section 1140.

TRADE NAMES

A. A corporation or other business entity doing business in this state under any name other than its legal name shall file a report with the Secretary of State setting forth the legal name of the corporation or business entity, the jurisdiction of organization of the corporation or business entity, the trade name under which the business is carried on, a brief description of the kind of business transacted under the name, and the address wherein the business is to be carried on. The report shall be executed by a representative of the business entity authorized to sign on its behalf. In the case of a corporation, the report shall be signed and filed in accordance with Section 1007 of this title. The trade name adopted shall be such as to be distinguishable upon the records in the Office of the Secretary of State from:

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

2. Names of foreign business entities qualified to do business in this state and filed with the Secretary of State then existing or which existed at any time during the preceding three (3) years; or

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

4. Names reserved with the Secretary of State.

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

SECTION 23. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1140.3 of Title 18, unless there is created a duplication in numbering, reads as follows:

A. A trade name report shall be amended when:

1. There is a false or erroneous statement in the trade name report;

2. There is a change in the kind of business transacted under the trade name; or

3. There is a change in or an additional address where the business is to be carried on under the trade name.

B. An amended trade name report shall set forth the trade name and specify the amendment therein. The report shall be executed by a party duly authorized to sign on behalf of the corporation or other business entity. In the case of a corporation, the report shall be acknowledged and filed in accordance with Section 1007 of Title 18 of the Oklahoma Statutes.

SECTION 24. AMENDATORY Section 6, Chapter 148, O.S.L. 1992, as last amended by Section 3, Chapter 145, O.S.L. 1997 (18 O.S. Supp. 1998, Section 2005), is amended to read as follows:

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

1. The name of the limited liability company;

2. The term of the existence of the limited liability company which may be perpetual; and

3. The street address of its principal place of business ~~in this state~~, wherever located, and the name and street address of its resident agent which shall be identical to its registered office in this state.

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

SECTION 25. AMENDATORY Section 9, Chapter 148, O.S.L. 1992, as amended by Section 5, Chapter 366, O.S.L. 1993 (18 O.S. Supp. 1998, Section 2008), is amended to read as follows:

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

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

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

(1) names upon the records in the Office of the Secretary of State of then existing limited liability companies whether organized pursuant to the laws of this state or licensed or registered as foreign limited liability companies, or

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

(3) names upon the records in the Office of the Secretary of State of limited partnerships formed

under the laws of this state or of foreign limited partnerships registered in accordance with the laws of this state, or

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

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

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

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

SECTION 26. AMENDATORY Section 11, Chapter 148, O.S.L. 1992, as amended by Section 6, Chapter 366, O.S.L. 1993 (18 O.S. Supp. 1998, Section 2010), is amended to read as follows:

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

1. A ~~principal~~ registered office which may be, but need not be, the same as its principal place of business; and

2. A resident agent for service of process on the limited liability company that ~~is~~ may be the domestic limited liability company itself, an individual resident of this state, or a domestic or qualified foreign corporation, limited liability company, or limited partnership. Each registered agent shall maintain a business office identical with the registered office which is open during regular business hours to accept service of process and otherwise perform the functions of a registered agent.

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

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

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

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

2. The statement shall include:

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

b. the new street address of the resident agent, and

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

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

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

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

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

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

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

SECTION 27. AMENDATORY Section 13, Chapter 148, O.S.L. 1992 (18 O.S. Supp. 1998, Section 2012), is amended to read as follows:

Section 2012. A. If any document filed with the Office of the Secretary of State under this act contains any typographical error, error of transcription, or other technical error or has been defectively executed, the document may be corrected by the filing of articles of correction.

B. Articles of correction shall set forth:

1. The title of the document being corrected;

2. ~~The name of each party to the document being corrected;~~

~~3.~~ The date that the document being corrected was filed; and

~~4.~~ 3. The provision in the document as previously filed and as corrected and, if execution of the document was defective, the manner in which it was defective.

C. Articles of correction may not make any other change or amendment which would not have complied in all respects with the requirements of this act at the time the document being corrected was filed.

D. Articles of correction shall be executed in the same manner in which the document being corrected was required to be executed.

E. Articles of correction may not:

1. Change the effective date of the document being corrected; or

2. Affect any right or liability accrued or incurred before its filing, except that any right or liability accrued or incurred by reason of the error or defect being corrected shall be extinguished by the filing if the person having the right has not detrimentally relied on the original document.

F. Notwithstanding that any instrument authorized to be filed with the Secretary of State pursuant to the provisions of this act is, when filed inaccurately, defectively, or erroneously executed, sealed or acknowledged, or otherwise defective in any respect, the Secretary of State shall not be liable to any person for the preclearance for filing, or the filing and indexing of the instrument by the Secretary of State.

SECTION 28. AMENDATORY Section 44, Chapter 148, O.S.L. 1992 (18 O.S. Supp. 1998, Section 2043), is amended to read as follows:

Section 2043. Before transacting business in this state, a foreign limited liability company shall register with the Office of the Secretary of State. In order to register, a foreign limited liability company shall:

1. Pay to the Secretary of State a registration fee required by Section 56 of this act;

2. Provide the Secretary of State with an original certificate from the certifying officer of the jurisdiction of the foreign limited liability company's organization attesting to the foreign limited liability company's organization under the laws of such jurisdiction; and

3. Submit to the Office of the Secretary of State an application in duplicate for registration as a foreign limited liability company, signed by a manager, member, or other person, and setting forth:

a. the name of the foreign limited liability company and, if different, the name under which it proposes to transact business in this state,

b. the state or other jurisdiction and date of its organization,

c. the name and street address of a registered agent in this state which agent shall be an individual resident of this state, or a domestic or qualified foreign corporation, ~~a foreign corporation having a place of business and authorized to do business in this state, a domestic~~ limited liability company, or ~~a foreign limited liability company having a place of business and authorized to do business in this state~~ limited partnership. Each registered agent shall maintain a business office identical with the registered office which is open during regular business hours to accept service of process and otherwise perform the functions of a registered agent. If an additional registered agent is designated, service of process shall be on that agent and not on the Secretary of State,

d. a statement that the Office of the Secretary of State is appointed the agent of the foreign limited liability company for service of process if no agent has been appointed under subparagraph c of this paragraph, or if appointed, the agent's authority has been revoked or if the agent cannot be found or served with the exercise of reasonable diligence,

e. the address of the office required to be maintained in the state of its organization by the laws of that state or, if not so required, of the principal office of the foreign limited liability company, and

f. such additional information as may be necessary or appropriate in order to enable the Office of the Secretary of State to determine whether such limited liability company is entitled to transact business in this state.

SECTION 29. AMENDATORY Section 46, Chapter 148, O.S.L. 1992, as amended by Section 14, Chapter 69, O.S.L. 1996 (18 O.S. Supp. 1998, Section 2045), is amended to read as follows:

Section 2045. ~~No certificate of registration shall be issued to~~ Subject to the provisions of Section 2008 of this title, a foreign limited liability company ~~unless the name of such company satisfies the requirements of Section 2008 of this title~~ may register with the Secretary of State under the name which it is registered in its jurisdiction of organization and that could be registered by a domestic limited liability company. If the name of a foreign limited liability company does not satisfy the requirements of Section 2008 of this title, ~~to obtain or maintain a certificate of registration,~~ the foreign limited liability company may file with the Secretary of State a statement by its manager duly adopting a fictitious name that is available, and which satisfies the requirements of Section 2008 of this title, which shall be used to

the exclusion of its true name when transacting business within this state.

SECTION 30. AMENDATORY Section 47, Chapter 148, O.S.L. 1992 (18 O.S. Supp. 1998, Section 2046), is amended to read as follows:

Section 2046. A. If any statement in the application for registration of a foreign limited liability company was false when made or any arrangements or other facts described have changed, making the application inaccurate in any respect, the foreign limited liability company shall promptly file in the Office of the Secretary of State a certificate, signed by a manager, member, or other person, correcting the statement and pay the fee provided for in Section ~~56~~ 2055 of this ~~act~~ title.

B. A registered foreign limited liability company shall record any changes in its principal office, its registered agent, or the registered agent's address, by filing with the Office of the Secretary of State a statement of the change and paying the fee provided for in Section ~~56~~ 2055 of this ~~act~~ title.

C. A foreign limited liability company authorized to transact business in this state shall promptly file a certificate, issued by the proper officer of the state or jurisdiction of its organization, attesting to the occurrence of a merger, in the Office of the Secretary of State and pay the fee provided for in Section 2056 of this title, whenever it is the surviving limited liability company and the merger:

1. Changes any statement in the application of registration of the foreign limited liability company; or

2. Involves any other foreign business entity authorized to transact business in this state.

D. If the merger changes any arrangements or other facts described in the application for registration of the surviving foreign limited liability company, it shall also comply with the

provisions of Section 2046 of this title; provided that it will not be required to pay an additional fee.

E. Whenever a foreign limited liability company authorized to transact business in this state ceases to exist because of a statutory merger or consolidation with a foreign business entity not qualified to transact business in this state, it shall comply with the provisions of Section 2047 of this title.

SECTION 31. AMENDATORY 54 O.S. 1991, Section 83, as amended by Section 66, Chapter 399, O.S.L. 1997 (54 O.S. Supp. 1998, Section 83), is amended to read as follows:

Section 83. The certificate required by Section 81 of this title ~~must~~ shall be signed by at least two of the partners ~~and acknowledged before an officer authorized to take acknowledgments of conveyances of real property~~. Persons doing business as partners, under a fictitious name, contrary to the provisions of this article, shall not maintain any action on or on account of any contracts made or transactions had in their partnership name in any court of this state until they have first filed the certificate; provided however, that if the partners shall at any time comply with the provisions of Sections 81 through 86 of this title, the partnership shall have the right to maintain an action in all partnership contracts and transactions entered into prior to as well as after compliance, and the disabilities imposed on partnerships for failure to comply shall be thereby removed.

SECTION 32. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 84.1 of Title 54, unless there is created a duplication in numbering, reads as follows:

Whenever a partnership ceases to transact business in this state under a fictitious name, it shall file a certificate of cancellation of the fictitious name with the Secretary of State, signed by at least two partners, and setting forth the names in full of all of

the current members of the partnership, their places of residence, and mailing addresses.

SECTION 33. AMENDATORY 54 O.S. 1991, Section 303, as amended by Section 18, Chapter 69, O.S.L. 1996 (54 O.S. Supp. 1998, Section 303), is amended to read as follows:

Section 303.

NAME

The name of each limited partnership as set forth in its certificate of limited partnership:

1. Shall contain the words "limited partnership" or the ~~abbreviation~~ abbreviations "L.P." or "LP";

2. May not contain the name of a limited partner unless:

a. it is also the name of a general partner or the corporate name of a corporate general partner, or

b. the business of the limited partnership had been carried on under that name before the admission of that limited partner; and

3. a. May not be the same as or indistinguishable from:

(1) names upon the records in the Office of the Secretary of State of then existing limited partnerships whether organized pursuant to the laws of this state or registered as foreign limited partnerships in this state, or

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

(3) names upon the records in the Office of the Secretary of State of foreign corporations registered in accordance with the laws of this

state then existing or which existed at any time during the preceding three (3) years, or

(4) trade names or fictitious names filed with the Secretary of State, or

(5) corporate, limited liability company or limited partnership names reserved with the Secretary of State, or

(6) names of then existing limited liability companies whether organized pursuant to the laws of this state or registered as foreign limited liability companies in this state.

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

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

(2) A certified copy of a final decree of a court of competent jurisdiction establishing the prior right of such limited partnership or holder of a

limited partnership name to the use of such name in this state.

SECTION 34. AMENDATORY 54 O.S. 1991, Section 305, as amended by Section 20, Chapter 69, O.S.L. 1996 (54 O.S. Supp. 1998, Section 305), is amended to read as follows:

Section 305.

SPECIFIED OFFICE AND AGENT

Each domestic limited partnership shall continuously maintain in this state:

1. An office, which may, but need not be a place of its business in this state, at which shall be kept the records required by Section 306 of this title to be maintained; and

2. An agent for service of process on the limited partnership, which agent ~~must be~~ may be the domestic limited partnership itself, an individual resident of this state, a domestic corporation, limited partnership, limited liability company; or a foreign corporation, limited partnership or limited liability company authorized to do business in this state.

SECTION 35. AMENDATORY 54 O.S. 1991, Section 305.1, as last amended by Section 21, Chapter 69, O.S.L. 1996 (54 O.S. Supp. 1998, Section 305.1), is amended to read as follows:

Section 305.1 A. A domestic limited partnership may change the location of its registered office in this state at any time as it may see fit. ~~Such~~ This change may be made by filing in the office of the Secretary of State a certificate, signed by a general partner ~~and acknowledged by a notary public~~, showing the change. At the time of filing of any such certificate, a fee in the amount of Twenty-five Dollars ($25.00) shall be paid to the Secretary of State.

B. A domestic limited partnership may change its registered agent at any time as it may see fit. Such change may be made by filing in the office of the Secretary of State a certificate, signed

by a general partner and acknowledged by a notary public, showing the change. At the time of filing of any such certificate, a fee in the amount of Twenty-five Dollars ($25.00) shall be paid to the Secretary of State.

C. The registered agent of a limited partnership may resign without appointing a successor by filing in the name of the limited partnership a certificate with the Secretary of State; but such resignation shall not become effective until thirty (30) days after each 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 limited partnership for which such registered agent was acting, at the principal office thereof, 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.

D. After receipt of the notice of the resignation of its registered agent provided for in subsection C of this section, the limited partnership for which such registered agent was acting shall obtain and designate a new registered agent to take the place of the registered agent so resigning in the same manner as provided for in subsection B of this section for change of registered agent. If such limited partnership, being a limited partnership of this state, 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 be deemed to be the registered agent of ~~such corporation~~ the limited partnership until a new registered agent is designated. The Office of the Secretary of State shall charge the fee prescribed

by Section ~~24~~ 350.1 of this ~~act~~ title for acting as registered agent.

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

SECTION 36. AMENDATORY 54 O.S. 1991, Section 309, as amended by Section 31, Chapter 422, O.S.L. 1998 (54 O.S. Supp. 1998, Section 309), is amended to read as follows:

Section 309.

CERTIFICATE OF LIMITED PARTNERSHIP

A. In order to form a limited partnership, a certificate of limited partnership must be executed and filed in the Office of the Secretary of State. The certificate shall set forth:

1. The name of the limited partnership;

2. The street address of the office and the name and address of the agent for service of process as required pursuant to Section 305 of this title;

3. The name and the business address of each general partner;

4. The term of the existence of the limited partnership which may be perpetual; and

5. Any other matters the general partners determine to include therein.

B. A limited partnership is formed at the time of the filing of the certificate of limited partnership in the Office of the Secretary of State or at any later time specified in the certificate of limited partnership if, in either case, there has been substantial compliance with the requirements of this section.

SECTION 37. AMENDATORY 54 O.S. 1991, Section 350, as last amended by Section 23, Chapter 69, O.S.L. 1996 (54 O.S. Supp. 1998, Section 350), is amended to read as follows:

Section 350.

REGISTRATION

Before transacting business in this state, a foreign limited partnership shall register with the Secretary of State. In order to register, a foreign limited partnership shall:

1. Pay to the Secretary of State a registration fee in the amount of Three Hundred Dollars ($300.00);

2. Provide the Secretary of State with a certificate from the certifying officer of the jurisdiction of the foreign limited partnership's organization attesting to the foreign limited partnership's organization under the laws of such jurisdiction; and

3. Submit to the Secretary of State, in duplicate, an application for registration as a foreign limited partnership, signed by a general partner and setting forth:

a. the name of the foreign limited partnership and, if different, the name under which it proposes to register and transact business in this state,

b. the jurisdiction and date of its formation,

c. the name and street address of any agent for service of process on the foreign limited partnership whom the foreign limited partnership elects to appoint; the agent must be an individual resident of this state, a domestic corporation ~~or~~, limited partnership, limited liability company or a foreign corporation, limited partnership, or limited liability company ~~having a place of business in and~~ authorized to do business in this state,

d. a statement that the Secretary of State is appointed the agent of the foreign limited partnership for service of process if no agent has been appointed pursuant to subparagraph c of this paragraph or, if appointed, the agent's authority has been revoked or

if the agent cannot be found or served with the exercise of reasonable diligence,

e. the address of the office required to be maintained in the jurisdiction of its organization by the laws of that jurisdiction or, if not so required, of the principal office of the foreign limited partnership,

f. the name and business address of each general partner, and

g. the address of the office at which is kept a list of the names and addresses of the limited partners and their capital contributions, together with an undertaking by the foreign limited partnership to keep those records until the foreign limited partnership's registration in this state is canceled or withdrawn.

SECTION 38. AMENDATORY 54 O.S. 1991, Section 353, as amended by Section 26, Chapter 69, O.S.L. 1996 (54 O.S. Supp. 1998, Section 353), is amended to read as follows:

Section 353.

CHANGES AND AMENDMENTS

A. If any statement in the application for registration of a foreign limited partnership was false when made or any arrangements or other facts described have changed, making the application inaccurate in any respect, the foreign limited partnership shall promptly file in the Office of the Secretary of State a certificate, signed by a general partner, correcting ~~such~~ the statement. At the time of filing of ~~any such~~ the certificate, a fee in the amount of One Hundred Dollars ($100.00) shall be paid to the Secretary of State.

B. A foreign limited partnership authorized to transact business in this state shall promptly file a certificate, issued by the proper officer of the state or jurisdiction of its organization, attesting to the occurrence of a merger, in the Office of the

Secretary of State and pay the fee provided for in subsection A of this section, whenever the foreign limited partnership is the surviving foreign limited partnership and the merger:

1. Changes any statement in the application of registration of the foreign limited partnership; or

2. Involves any other foreign business entity authorized to transact business in this state.

C. If the merger changes any arrangements or other facts described in the application for registration of the surviving foreign limited partnership, it shall also comply with subsection A of this section; provided, that it shall not be required to pay an additional fee.

D. Whenever a foreign limited partnership authorized to transact business in this state ceases to exist because of a statutory merger or consolidation with a foreign business entity not qualified to transact business in this state, it shall comply with the provisions of Section 354 of this title.

SECTION 39. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 353.3 of Title 54, unless there is created a duplication in numbering, reads as follows:

If a registered agent resigns or an agent was not appointed in the application for registration, a foreign limited partnership may appoint or designate a registered agent and street address of its registered office at any time. The appointment or designation shall be made in the same manner as prescribed in Section 353.1 of Title 54 of the Oklahoma Statutes.

SECTION 40. AMENDATORY 66 O.S. 1991, Section 17, is amended to read as follows:

Section 17. The contracts herein authorized shall be ~~recorded~~ filed by the Secretary of State ~~in a book of records to be kept for that purpose~~. Upon payment of the full purchase money and the performance of the terms and conditions stipulated in any such

contract, a declaration ~~in writing~~ to that effect may be made by the vendor, or lessor or bailor or ~~his or its~~ an assignee, ~~which declaration may be made on the margin of the record of the contract~~ by a separate instrument, duly attested~~, or it may be made by a separate instrument to be~~ and acknowledged by the vendor, lessor or bailor or ~~his or its~~ an assignee, and ~~recorded~~ filed as aforesaid. For ~~such~~ these services the Secretary of the State shall ~~be entitled to~~ collect a fee of Twenty-five Dollars ($25.00) for ~~recording~~ filing each of ~~said~~ the contracts and each of ~~said~~ the declarations ~~and a fee of Five Dollars ($5.00) for noting such declaration on the margin of the record~~.

SECTION 41. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 664.1 of Title 74, unless there is created a duplication in numbering, reads as follows:

The Secretary of State may refund any monies received due to an erroneous collection. As used in this section, "erroneous collection" means:

1. A transaction filed by the Office of the Secretary of State and later found to be improper;

2. A transaction filed with the Office of the Secretary of State by a customer and the customer, within forty-five (45) days of the filing of the transaction, determines the transaction contains a mistake, corrects the mistake, and requests a refund;

3. A transaction in which the customer requests a refund the same day of payment and the customer presents the receipt as evidence of payment; or

4. An overpayment which has been accepted by the Office of the Secretary of State.

SECTION 42. AMENDATORY 74 O.S. 1991, Section 7009, as amended by Section 8, Chapter 103, O.S.L. 1993 (74 O.S. Supp. 1998, Section 7009), is amended to read as follows:

Section 7009. A. Participation in the Oklahoma State Employee Charitable Contribution Campaign shall be limited to voluntary, charitable, health and welfare agencies that provide or support direct health and welfare services to individuals or their families and meet the criteria set out in this section. ~~Such~~ The health and welfare services ~~must~~ shall be available to state employees, unless they are rendered to needy persons overseas. ~~Such~~ The services ~~must~~ shall directly benefit human beings, whether children, youth, adults, the aged, the ill and infirm, or the mentally or physically handicapped. ~~Such~~ The services ~~must~~ shall consist of care, research, or education in the fields of human health or social adjustment and rehabilitation; relief for victims of natural disasters and other emergencies; or assistance to those who are impoverished and, therefore, in need of food, shelter, clothing, and basic human welfare services.

B. For the purposes of the Oklahoma State Employee Charitable Contribution Campaign, basic human welfare service shall not include:

1. Organizations whose primary purpose is the direct or indirect support of institutions of higher education;

2. Lobbying; and

3. Religious activities.

C. To be included in the Oklahoma State Employee Charitable Contribution Campaign, a voluntary charitable agency, in addition to meeting the other requirements set forth in this section, shall:

1. Be a nonprofit, tax-exempt charitable organization and submit to the participating federation a 501(c)(3) exemption from the Internal Revenue Service;

2. Be incorporated or authorized to do business in this state as a private, nonprofit organization;

3. ~~Secure~~ Register, annually, ~~a license from the Oklahoma Tax Commission~~ with the Oklahoma Secretary of State to ~~raise funds~~ solicit or accept contributions in this state;

4. Submit to the participating federation an audit of the agency, conducted by an accounting firm or individual holding a permit to practice public accounting in this state according to the generally accepted standards of accounting for nonprofit organizations; and

5. Submit to the participating federation a copy of the annual form 990.

D. Applications to the Oklahoma State Employee Charitable Contribution Campaign shall be submitted to the State Agency Review Committee from local federations which shall include United Ways, United Funds, Combined Health Appeals, International Social Service Agencies and any other local federation consisting of at least five local agencies which meet the requirements of this section. Each federation shall certify the application for its member agencies and shall give state charitable agencies precedence over national agencies if both qualify for the charitable contribution campaign. Applications from individual agencies shall not be accepted.

SECTION 43. This act shall become effective November 1, 1999.

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