

1 STATE OF OKLAHOMA

2 1st Session of the 47th Legislature (1999)

3 COMMITTEE SUBSTITUTE
4 FOR
5 HOUSE BILL NO. 1150

6 By: Pope (Clay)

7 COMMITTEE SUBSTITUTE

8 An Act relating to corporations; creating the
9 Oklahoma Farming or Ranching Business Entities Act;
10 defining terms; amending 18 O.S. 1991, Sections 955,
11 954, as last amended by Section 6, Chapter 2, O.S.L. 1994,
12 954, as amended by Section 2, Chapter 61, O.S.L.
13 1994, 952 and 953, as amended by Section 1, Chapter
14 61, O.S.L. 1994 (18 O.S. Supp. 1998, Sections 953,
15 954 and 955), which relate to corporate farming;
16 clarifying and updating language; prohibiting certain
17 business entities from owning, acquiring and
18 otherwise obtaining or leasing agricultural land and
19 forming corporations and other business entities and
20 from engaging in the business of farming or ranching;
21 specifying certain conditions and restrictions;
22 providing and adding to exceptions; adding to,
23 modifying and clarifying certain exceptions; making
24 certain production contracts not construed to mean or
25 include ownership, acquisition, obtaining or leasing
26 of agricultural land or engaging in farming;
27 requiring certain submissions; requiring certain
28 determinations of compliance; increasing penalty;
29 providing for civil and criminal penalties; requiring
30 certain divestments and disposition of property;
31 authorizing injunctions; requiring the Attorney
32 General to institute certain suits; authorizing
district attorneys to institute certain suits;
providing for deposit of recovered funds; requiring
certain filings; providing contents; providing
procedures and requirements; making certain actions
unlawful; authorizing certain citizen suits;
providing for costs; requiring submission of certain
reports; providing for contents; providing for
penalty; making reports public; making certain
actions unlawful; providing for prosecution of
certain violations; specifying certain civil
penalties; amending 18 O.S. 1991, Section 1006, as
last amended by Section 3, Chapter 69, O.S.L. 1996
(18 O.S. Supp. 1998, Section 1006), which relates to
certificates of incorporation; providing exception to
certain purposes; repealing 18 O.S. 1991, Sections
951 and 956, which relate to forming of certain
corporations and civil actions relating thereto;
providing for recodification; providing for
codification; providing an effective date; and
declaring an emergency.

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

2 SECTION 1. NEW LAW A new section of law to be codified
3 in the Oklahoma Statutes as Section 957.1 of Title 18, unless there
4 is created a duplication in numbering, reads as follows:

5 The provisions of Chapter 21 of Title 18 of the Oklahoma
6 Statutes shall be known and may be cited as the "Oklahoma Farming or
7 Ranching Business Entities Act".

8 SECTION 2. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 957.2 of Title 18, unless there
10 is created a duplication in numbering, reads as follows:

11 As used in the Oklahoma Farming or Ranching Business Entities
12 Act:

13 1. "Agricultural land" means land suitable for use in farming;

14 2. "Breeding livestock, poultry, or crops for developing
15 genetically superior livestock, poultry, or crops whether for sale
16 or replacement" means the breeding or raising of livestock, poultry,
17 eggs, or crops for the purpose of producing seed stock, new strains,
18 or genetically modifying livestock, poultry, eggs, or crops to
19 improve growth, resistance factors, production, and other physical
20 traits and attributes;

21 3. "Business entity" means any corporation, corporate
22 partnership, limited liability company, partnership, limited
23 partnership, trust, cooperative, association or any other type of
24 organization, and any affiliates or combinations of such entities;

25 4. "Farming or ranching" means the cultivation of land for the
26 production of agricultural crops, the breeding or raising of
27 poultry, the production of eggs, the production of milk, the
28 production of fruit or other horticultural crops, grazing, or the
29 breeding or raising of livestock. The term "farming or ranching"
30 shall not include the production of timber, forest products, nursery
31 products or sod, feed mills, hatcheries, custom feeding of cattle,
32 processing facilities, grain storage facilities, food canning

1 operations, food processing or frozen food processing, or contracts
2 to provide spraying, harvesting or other such services; and

3 5. "Production contract" means a contract entered into by a
4 business entity with an individual engaged in farming or ranching in
5 this state for the production of agricultural products, or breeding
6 or raising of livestock or poultry, including, but not limited to,
7 grow-out contracts, marketing agreements, lease arrangements, or
8 other arrangements under which an individual engaged in the business
9 of farming or ranching cares for, maintains, or raises livestock or
10 poultry.

11 SECTION 3. AMENDATORY 18 O.S. 1991, Section 955, as last
12 amended by Section 6, Chapter 2, O.S.L. 1994 (18 O.S. Supp. 1998,
13 Section 955), is amended to read as follows:

14 Section 955. A. ~~No~~ Except as otherwise provided by the
15 Oklahoma Farming or Ranching Business Entities Act, no person,
16 corporation, association or any other business entity shall engage
17 in farming or ranching, or own or lease any interest in land to be
18 used in the business of farming or ranching, except the following:

19 1. Natural persons and the estates of such persons;

20 2. Trustees of trusts; provided that:

21 a. each beneficiary shall be a person or entity
22 enumerated in paragraphs 1 through 5 of this
23 subsection, ~~and~~

24 b. there shall not be more than ten beneficiaries unless
25 the beneficiaries in excess of ten are related as
26 lineal descendants or are or have been related by
27 marriage or adoption to lineal descendants, and

28 c. at least sixty-five percent (65%) of the trust's
29 annual gross receipts shall be derived from farming or
30 ranching, or from allowing others to extract minerals
31 underlying lands held by the trust. If the trust
32 cannot ~~comply with~~ meet the annual gross receipts

1 test, the trust may furnish ~~records of~~ its gross
2 receipts for each of the previous five (5) years, or
3 for each year that it has been in existence if less
4 than five (5) years, and the average of such annual
5 gross receipts may be used for purposes of complying
6 with this section;

7 3. Corporations, as ~~provided for~~ authorized in ~~Sections 951~~
8 ~~through 954 of this title, or as otherwise permitted by law~~ the
9 Oklahoma Farming or Ranching Business Entities Act;

10 4. Partnerships and limited partnerships; provided that:

- 11 a. each partner shall be a person or entity enumerated in
12 paragraphs 1 through 5 of this subsection, ~~and~~
- 13 b. there shall not be more than ten partners unless said
14 partners in excess of ten are related as lineal
15 descendants or are or have been related by marriage or
16 adoption to lineal descendants, and
- 17 c. at least sixty-five percent (65%) of the partnership's
18 annual gross receipts shall be derived from farming or
19 ranching, or from allowing others to extract minerals
20 underlying lands held by the partnership. If the
21 partnership cannot ~~comply with~~ meet the annual gross
22 receipts test, the partnership may furnish ~~records of~~
23 its gross receipts for each of the previous five (5)
24 years, or for each year that it has been in existence
25 if less than five (5) years, and the average of such
26 annual gross receipts may be used for purposes of
27 complying with this section;

28 5. Limited liability companies formed pursuant to the Oklahoma
29 Limited Liability Company Act; provided that:

- 30 a. each member shall be a person or entity enumerated in
31 paragraphs 1 through 5 of this subsection, ~~and~~
- 32

1 b. there shall not be more than ten members unless said
2 members in excess of ten are related as lineal
3 descendants or are or have been related by marriage or
4 adoption to lineal descendants, and

5 c. at least sixty-five percent (65%) of the limited
6 liability company's annual gross receipts shall be
7 derived from farming or ranching, or from allowing
8 others to extract minerals underlying lands held by
9 the limited liability company. If the limited
10 liability company cannot ~~comply with~~ meet the annual
11 gross receipts test, the limited liability company may
12 furnish ~~records of~~ its gross receipts for each of the
13 previous five (5) years, or for each year that it has
14 been in existence if less than five (5) years, and the
15 average of such annual gross receipts may be used for
16 purposes of complying with this section; and

17 6. Any Oklahoma-owned, -operated and -controlled corporation,
18 association and business entity.

19 ~~B. Any farming or ranching corporation, trust, partnership,~~
20 ~~limited partnership, limited liability company or other entity which~~
21 ~~violates any provisions of this section shall be fined an amount not~~
22 ~~to exceed Five Hundred Dollars (\$500.00). Any other person or~~
23 ~~entity who knowingly violates this section shall be deemed guilty of~~
24 ~~a misdemeanor.~~

25 ~~C. The provisions of this act shall not apply to interests in~~
26 ~~land acquired prior to June 1, 1978~~ Domestic corporations may own,
27 acquire and otherwise obtain or lease any agricultural land in this
28 state or be formed under the Oklahoma General Corporation Act to
29 engage in the business of farming or ranching if the following
30 requirements are met by the domestic business entity:

31 1. There shall be no shareholders other than:

32 a. natural persons,

1 b. estates,

2 c. trustees of trusts for the benefit of natural persons,

3 if such trustees are either:

4 (1) natural persons, or

5 (2) banks or trust companies which either have their

6 principal place of business in Oklahoma or are

7 organized under the laws of the State of

8 Oklahoma, or

9 d. corporations owned by no shareholders other than those

10 described in subparagraph a, b or c of this paragraph

11 and meeting the requirements of paragraph 3 of this

12 subsection;

13 2. a. Not more than thirty-five percent (35%) of the

14 corporation's annual gross receipts shall be from any

15 source other than:

16 (1) farming or ranching or both, as the case may be,

17 or

18 (2) allowing others to extract from the corporate

19 lands any minerals underlying the same,

20 including, but not limited to, oil and gas.

21 b. In the event a corporation does not meet the

22 thirty-five percent (35%) annual gross receipt test,

23 then the corporation may furnish records of its gross

24 receipts for each of the previous five (5) years, or

25 for each year that it has been in existence if less

26 than five (5) years, and the average of said annual

27 gross receipts shall be used in lieu of the annual

28 gross receipts of the corporation for purposes of

29 complying with this section; and

30 3. a. Except as otherwise provided in this paragraph, there

31 shall not be more than ten shareholders unless the

32 shareholders in excess of ten are related as lineal

1 descendants or are or have been related by marriage to
2 lineal descendants or persons related to lineal
3 descendants by adoption or any combination of same.

4 b. For a corporation engaged in breeding horses, there
5 shall not be more than twenty-five shareholders.

6 SECTION 4. AMENDATORY 18 O.S. 1991, Section 954, as
7 amended by Section 2, Chapter 61, O.S.L. 1994 (18 O.S. Supp. 1998,
8 Section 954), is amended to read as follows:

9 Section 954. A. The provisions of this act, Section 951 et
10 seq. of this title, the Oklahoma Farming or Ranching Business
11 Entities Act shall not apply where a corporation, either domestic or
12 foreign if a business entity:

13 1. Engages in bona fide educational, scientific or experimental
14 research and/or feeding arrangements or operations concerned with in
15 the feeding of livestock or poultry, or bona fide educational,
16 scientific or experimental research in farming, but only to the
17 extent of such research and/or feeding arrangements or such
18 livestock or poultry operations. The provisions of this paragraph
19 include but are not limited to research for breeding livestock,
20 poultry or crops for developing genetically superior livestock,
21 poultry or crops whether for sale or replacement; ~~or~~

22 2. Engages in operations concerned with the breeding or
23 production and raising of livestock ~~or~~, poultry for sale or use as
24 or crops to be:

- 25 a. sold for breeding stock and including only directly
26 related operations, such as breeding or feeding
27 livestock or poultry which are not selected or sold as
28 breeding stock purposes, or for further production
29 purposes to noncontractors, or
30 b. used by the authorized business entity in its contract
31 relationship; ~~or~~
32

1 3. ~~Engages in poultry and/or swine operations, including only~~
2 ~~directly related operations, such as operating hatcheries,~~
3 ~~facilities for the production of breeding stock, feed mills,~~
4 ~~processing facilities, and providing supervisory, technical and~~
5 ~~other assistance to any other persons performing such services on~~
6 ~~behalf of the corporation~~ Those business entities meeting the
7 provisions of Section 8 of this act; or

8 4. Acquires agricultural land in such acreage as is necessary
9 for the operation of a nonfarming or nonranching business. Such
10 land shall not be used for farming or ranching except under lease to
11 those entities specified in Section 3 of this act;

12 5. Acquires agricultural land:

- 13 a. as a bona fide encumbrance taken for purposes of
14 security,
15 b. by process of law in the collection of debts,
16 c. pursuant to a contract for deed executed prior to the
17 effective date of this act, or
18 d. by any procedure for the enforcement of a lien or
19 claim thereon, whether created by mortgage or
20 otherwise.

21 A business entity acquiring agricultural land by process of law in
22 the collection of debts or pursuant to a contract for deed executed
23 prior to the effective date of this act shall divest itself of any
24 such agricultural land or ownership within five (5) years after such
25 process of law, contract or procedure;

26 6. Acquires a lease on agricultural land:

- 27 a. as a bona fide encumbrance taken for purposes of
28 security,
29 b. by process of law in the collection of debts,
30 c. pursuant to a contract for deed executed prior to the
31 effective date of this act,
32

1 d. by any procedure for the enforcement of a lien or
2 claim thereon, whether created by mortgage or
3 otherwise,

4 e. as a part of financial negotiations between a business
5 entity and a contract grower, or

6 f. for factors not limited to death, divorce or
7 disability of the contract grower;

8 7. Which is a trust company or bank acting in a fiduciary
9 capacity or as a trustee for a nonprofit corporation, acquires
10 agricultural land;

11 8. Acquired agricultural land, by lease or ownership, prior to
12 July 1, 1999, if the business entity was in compliance with the
13 provisions of Title 18, O.S. 1991, Sections 951 through 956 and as
14 amended prior to the effective date of this act.

15 a. If any such business entity owned or leased the
16 agricultural land prior to July 1, 1999, the business
17 entity shall not own or lease any greater acreage of
18 agricultural land or number of livestock than it owned
19 or leased prior to July 1, 1999, except as otherwise
20 provided by this paragraph.

21 b. The provisions of this paragraph shall not prohibit
22 the acquisition of agricultural land as a result of
23 the purchase or merger of another business entity
24 owning agricultural land acquired prior to July 1,
25 1999;

26 9. Acquired agricultural land pursuant to a purchase agreement
27 as authorized by Title 18, O.S. 1991, Sections 951 through 956, as
28 amended, prior to July 1, 1999, if the business was in compliance
29 with the provisions of Title 18, O.S. 1991, Sections 951 through 956
30 and as amended prior to the effective date of this act.

31 a. If the business entity executed the purchase agreement
32 for the agricultural land prior to July 1, 1999, the

1 business entity shall not own or lease any greater
2 acreage of agricultural land or number of livestock
3 than it owned or leased prior to July 1, 1999, except
4 as otherwise provided by this paragraph.

5 b. The provisions of this paragraph shall not prohibit
6 the acquisition of agricultural land as a result of
7 the purchase or merger of another business entity
8 owning agricultural land acquired prior to July 1,
9 1999;

10 10. Leases agricultural land for the pasturing or grazing of
11 livestock for one (1) year or less and is a business entity other
12 than those specified in Section 3 of this act;

13 11. Engages in forestry as defined by Section 1-4 of Title 2 of
14 the Oklahoma Statutes; ~~or~~

15 ~~5. Whose~~ 12. Is one whose corporate purpose is charitable or
16 eleemosynary; or

17 ~~6. 13.~~ Presently engages in fluid milk processing within the
18 State of Oklahoma or leases to a fluid milk processor so engaged;
19 provided, this exception is limited to such dairy operations as are
20 necessary to meet such processor's needs.

21 B. The execution of a production contract with an individual
22 engaged in farming or ranching in this state shall not be construed
23 to mean or include the ownership, acquisition, or lease of, or
24 otherwise obtaining, either directly or indirectly, any agricultural
25 land in this state by the business entity.

26 SECTION 5. AMENDATORY 18 O.S. 1991, Section 952, is
27 amended to read as follows:

28 Section 952. A. ~~Any license issued after June 1, 1971, under~~
29 ~~the Oklahoma Business Corporation Act to a foreign corporation for~~
30 ~~the purpose of engaging in farming or ranching or for the purpose of~~
31 ~~owning or leasing any interest in land to be used in the business of~~
32

1 ~~farming or ranching shall be revoked within five (5) years of the~~
2 ~~effective date of this act.~~

3 ~~B. The corporate franchise of any existing domestic corporation~~
4 ~~formed under the Oklahoma Business Corporation Act after June 1,~~
5 ~~1971, for the purpose of engaging in farming or ranching or for the~~
6 ~~purpose of owning or leasing any interest in land to be used in the~~
7 ~~business of farming or ranching shall be vacated within five (5)~~
8 ~~years of the effective date of this act unless its articles of~~
9 ~~incorporation comply with Section 951 of this title.~~

10 1. The Office of the Secretary of State shall submit on a
11 monthly basis to the Department of Agriculture a list of all
12 business entities receiving certificates of incorporation or
13 corporate powers, franchises, licenses or other authorization
14 pursuant to the provisions of the Oklahoma Farming or Ranching
15 Business Entities Act whose stated purpose in whole or in part is
16 farming or ranching.

17 2. Each business entity owning, acquiring or otherwise
18 obtaining or leasing any agricultural land in this state or forming
19 under the Oklahoma General Corporation Act shall specifically
20 provide in their stated purpose, or in an amended purpose, in whole
21 or in part, that such business entity owns, is acquiring, or is
22 otherwise obtaining or leasing agricultural land in this state or is
23 engaged in the business of farming or ranching.

24 B. The Department of Agriculture shall, prior to granting any
25 license, permit, authorization or certificate, or renewal thereof,
26 for a business entity pursuant to the Agricultural Code, determine
27 whether such business entity is in compliance with the Oklahoma
28 Farming or Ranching Business Entities Act.

29 C. The corporate franchise powers, privileges, franchises,
30 certificate, license, or other authorization of any domestic
31 corporation governed by the Oklahoma General Corporation Act
32 business entity formed for the purpose of farming or ranching or for

1 the purpose of owning or leasing any interest in land to be used in
2 the business of farming or ranching and permitted to engage in such
3 activity ~~under this act~~ pursuant to the Oklahoma Farming or Ranching
4 Business Entities Act shall be vacated promptly in the manner
5 prescribed by Section ~~104~~ 1104 of this ~~act~~ title, if ~~the corporation~~
6 such business entity has persistently violated the provisions of
7 ~~subsection A of Section 951 of this title~~ the Oklahoma Farming or
8 Ranching Business Entities Act.

9 D. 1. The State Board of Agriculture shall initiate and
10 prosecute civil or criminal actions and proceedings when deemed
11 necessary to enforce or carry out any of the provisions of ~~this code~~
12 the Oklahoma Farming or Ranching Business Entities Act.

13 2. The district courts of this state may prevent and restrain
14 violations of the Oklahoma Farming or Ranching Business Entities Act
15 through the issuance of an injunction.

16 3. The Attorney General or district attorney shall institute
17 suits on behalf of the state to enforce the provisions of the
18 Oklahoma Farming or Ranching Business Entities Act.

19 E. ~~This act~~ Except as otherwise provided by the Oklahoma
20 Farming or Ranching Business Entities Act, a business entity, either
21 domestic or foreign, shall not ~~require any foreign or domestic~~
22 ~~corporation~~ be required to dispose of any property acquired on or
23 before ~~June 1, 1971~~ July 1, 1999.

24 F. Any ~~farming or ranching corporation~~ entity subject to the
25 Oklahoma Farming or Ranching Business Entities Act which violates
26 the provisions of ~~Section 951 of this title~~ the Oklahoma Farming or
27 Ranching Business Entities Act, upon conviction thereof, shall be
28 guilty of a misdemeanor and shall be fined an amount not ~~to exceed~~
29 less than Five Hundred Dollars (\$500.00). ~~Any other person,~~
30 ~~corporation or entity who knowingly violates such section shall be~~
31 ~~deemed guilty of a misdemeanor.~~

1 G. 1. Any corporation violating the provisions of the Oklahoma
2 Farming or Ranching Business Entities Act shall be subject to a
3 civil penalty of not more than Fifty Thousand Dollars (\$50,000.00)
4 and shall divest itself of any land acquired in violation of this
5 section within one (1) year after judgment is entered in the action.

6 2. Civil penalties sued for and recovered by the Attorney
7 General shall be paid into the state General Revenue Fund. Civil
8 penalties sued for and recovered by the district attorney shall be
9 paid into the general fund of the county where the proceedings were
10 instigated.

11 SECTION 6. AMENDATORY 18 O.S. 1991, Section 953, as
12 amended by Section 1, Chapter 61, O.S.L. 1994 (18 O.S. Supp. 1998,
13 Section 953), is amended to read as follows:

14 Section 953. A. ~~No corporation organized for a purpose other~~
15 ~~than farming or ranching shall own, lease or hold, directly or~~
16 ~~indirectly, agricultural lands in excess of that amount reasonably~~
17 ~~necessary to carry out its business purpose.~~

18 ~~B.~~ Any resident of the county in which the land is situated,
19 who is of legal age, or the State Department of Agriculture may
20 initiate an action for the divestment of an interest in land held by
21 a ~~corporation~~ business entity in violation of the provisions of
22 ~~Sections 951 through 954 of this title~~ the Oklahoma Farming or
23 Ranching Business Entities Act, in the county in which the land is
24 situated. If such action is successful all costs of the action
25 shall be assessed against the defendant ~~corporation~~ business entity,
26 and a reasonable attorney's fee shall be allowed the plaintiff.
27 Should judgment be rendered for the defendant, such costs and a
28 reasonable attorney's fee for the defendant shall be paid by the
29 plaintiff.

30 ~~C.~~ B. In the event an action for the divestment of an interest
31 in land held by a ~~corporation~~ business entity in violation of the
32 provisions of ~~Sections 951 through 954 of this title~~ the Oklahoma

1 Farming or Ranching Business Entities Act is successful against said
2 ~~corporation~~ business entity, ~~said corporation~~ the business entity
3 shall be required to dispose of ~~said~~ the land within such reasonable
4 period of time as may be ordered by the court, subject to the
5 ~~corporation's~~ business entity's right of appeal. ~~Except as~~
6 ~~otherwise provided by Section 954 of this title, the provisions of~~
7 ~~Sections 951 through 954 of this title shall not apply to~~
8 ~~corporations engaging in food canning operations, food processing or~~
9 ~~frozen food processing insofar as such corporations engage in the~~
10 ~~raising of food products for aforesaid purposes.~~

11 D. C. Upon the petition to a court of competent jurisdiction by
12 shareholders holding twenty-five percent (25%) or more of the shares
13 in a farming or ranching business corporation the court in its
14 discretion, for good cause shown, may order the corporation
15 dissolved and the assets of such corporation divided in kind pro
16 rata to the shareholders or liquidated and the proceeds of such
17 liquidation divided pro rata to the shareholders all according to
18 the procedures specified for the dissolution and liquidation of
19 business corporations under the Oklahoma General Corporation Act.

20 SECTION 7. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 957.7 of Title 18, unless there
22 is created a duplication in numbering, reads as follows:

23 A. 1. All business entities, except those specified in Section
24 3 of this act, holding property used in farming or ranching
25 operations and which are authorized to own or lease property in this
26 state for the purpose of farming or ranching or to engage in the
27 business of farming or ranching, pursuant to the provisions of the
28 Oklahoma Farming or Ranching Business Entities Act, shall submit by
29 August 1, 1998, and July 1 of each year thereafter, a report
30 containing a monthly accounting of the number of animal units by
31 species and weight located on any land or at any facility owned or
32

1 operated by the business entity in this state on such date and any
2 other information required by the State Board of Agriculture.

3 2. The report shall be signed by the board of directors of the
4 business entity, or other person designated by the business entity
5 to sign legal documents, under penalty of perjury.

6 3. The report shall be filed with the Office of the Secretary
7 of State and the Department of Agriculture and shall be available to
8 the public at such offices.

9 B. Any person or business entity which:

10 1. Knowingly submits false or materially misleading information
11 or statements;

12 2. Through the proper and due exercise of care and diligence,
13 should have known that any submission of information and statements
14 required of business entities subject to the provisions of this
15 section are false or materially misleading; or

16 3. Fails or refuses to submit any required information and
17 statements, is guilty of a misdemeanor and, upon conviction thereof,
18 may be subject to the penalty specified by Section 5 of this act.

19 C. The Secretary of State shall keep a separate index of all
20 business entities subject to the provisions of this section.

21 SECTION 8. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 957.8 of Title 18, unless there
23 is created a duplication in numbering, reads as follows:

24 A. 1. Any person, corporation, association or other business
25 entity not entitled to engage in farming or ranching or to own or
26 lease any interest in land to be used in the business of farming or
27 ranching in this state or to expand farming or ranching interests
28 pursuant to the Oklahoma Farming or Ranching Business Entities Act
29 due to the inability to contract with or lease to those entities
30 specified by Section 3 of this act may be determined to be eligible
31 to engage in or expand such business or interests pursuant to the
32 provisions of this section.

1 2. Nothing in this section shall require any corporation or
2 business entity engaging in production contracts with family farmers
3 and ranchers to submit to the Department of Agriculture and to
4 Oklahoma State University for review, their contracts, unless the
5 corporation or business entity wishes to expand their farming or
6 ranching interests through owning or leasing their own land for
7 activities not exempt pursuant to the provisions of the Oklahoma
8 Farming or Ranching Business Entities Act.

9 B. 1. Any business entity specified by subsection A of this
10 section may apply to the Department of Agriculture for a certificate
11 to engage in farming or ranching or to own or lease any interest in
12 the business of farming or ranching without contracting with or
13 leasing to those entities specified in Section 3 of this act. Along
14 with the application, the business entity shall submit a copy of a
15 proposed contract or lease which will be offered to entities
16 specified in Section 3 of this act located in or serving a
17 designated geographic area. The Department shall submit to the
18 Agriculture Economics Department of the Oklahoma State University
19 the proposed contract or lease for their examination to determine if
20 the terms of the contract or lease are fair and reasonable using
21 current market conditions within the geographic area designated in
22 the application based upon guidelines established by the Agriculture
23 Economics Department of Oklahoma State University. Such
24 determination shall be made within thirty (30) working days of
25 application to the Department of Agriculture.

26 2. After a determination by the Agriculture Economics
27 Department of the Oklahoma State University that the terms of the
28 lease or contract are fair and reasonable, the business entity shall
29 have one (1) year after such determination to contract with or lease
30 with entities specified by Section 3 of this act that are located
31 within or serve the geographic area designated in the application.
32

1 3. If the business entity is unable to contract or lease to a
2 sufficient number of the entities specified by Section 3 of this act
3 located in or that serve the designated geographic area within the
4 one-year period to fulfill production needs, after submission of
5 documentation specified by this section, the Department shall
6 certify that the business entity is eligible to engage in farming or
7 ranching or own or lease any interest in land used in the business
8 of farming or ranching for three (3) years. The certificate shall
9 be accepted by the Secretary of State as evidence that the business
10 entity is in compliance with the eligibility requirements of the
11 Oklahoma Farming or Ranching Business Entities Act.

12 4. The Department shall require the submission of newspaper or
13 radio advertisements, outreach through the Oklahoma State University
14 Cooperative Extension Service, and sufficient evidence of the
15 refusal of entities specified by Section 3 of this act within the
16 designated geographic area to contract with or lease to the business
17 entity reflecting the inability of the business entity to enter into
18 the required contracts or leases.

19 5. The certifications shall be valid for three (3) years.
20 Renewal of the certifications shall require a re-examination of the
21 ability of the business entity to contract with or lease to the
22 entities specified by Section 3 of this act located within or
23 servicing the designated geographic area. Nothing in this act shall
24 require the sale or lease of facilities constructed by the business
25 entity during their three (3) years of certification.

26 C. Any business entity not entitled to engage in farming or
27 ranching or to own or lease any interest in land to be used in the
28 business of farming or ranching pursuant to the Oklahoma Farming or
29 Ranching Business Entities Act due to the inability to contract with
30 or lease to those entities specified by Section 3 of this act
31 because of the geographic isolation of the business entity, upon
32 submission of an application for a certificate to engage in farming

1 or ranching or to own or lease any interest in land without
2 contracting with or leasing to those entities specified by Section 3
3 of this act, and the submission of sufficient evidence of such
4 geographic isolation and such other information required by the
5 Department, the Department may issue to such business entity a
6 certificate that specifies the business entity to be in compliance
7 with the eligibility requirements of the Oklahoma Farming or
8 Ranching Business Entities Act.

9 D. The documents used to support the application shall be
10 proprietary and remain confidential.

11 E. The Agriculture Economics Department at Oklahoma State
12 University shall at the request of the Department prepare guidelines
13 for the determination of fair and reasonable standards using current
14 market conditions within geographic areas of the state to assist the
15 Department in evaluating proposed contractual terms to determine the
16 eligibility of business entities to engage in farming or ranching or
17 expand business interests pursuant to the Oklahoma Farming or
18 Ranching Business Entities Act. The Board shall abide by these
19 guidelines.

20 SECTION 9. AMENDATORY 18 O.S. 1991, Section 1006, as
21 last amended by Section 3, Chapter 69, O.S.L. 1996 (18 O.S. Supp.
22 1998, Section 1006), is amended to read as follows:

23 Section 1006.

24 CERTIFICATE OF INCORPORATION; CONTENTS

25 A. The certificate of incorporation shall set forth:

26 1. The name of the corporation which shall contain one of the
27 words "association", "company", "corporation", "club", "foundation",
28 "fund", "incorporated", "institute", "society", "union",
29 "syndicate", or "limited" or one of the abbreviations "co.",
30 "corp.", "inc.", "ltd.", or words or abbreviations of like import in
31 other languages provided that such abbreviations are written in
32 Roman characters or letters, and which shall be such as to

1 distinguish it upon the records in the Office of the Secretary of
2 State from:

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

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

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

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

16 e. corporate, limited liability company or limited
17 partnership names reserved with the Secretary of
18 State, or

19 f. names of then existing limited liability companies
20 whether organized pursuant to the laws of this state
21 or registered as foreign limited liability companies
22 in this state;

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

26 3. a. The nature of the business or purposes to be conducted
27 or promoted.—~~It,~~

28 b. Except as otherwise provided by subparagraph c of this
29 paragraph, it shall be sufficient to state, either
30 alone or with other businesses or purposes, that the
31 purpose of the corporation is to engage in any lawful
32 act or activity for which corporations may be

1 organized under the general corporation law of
2 Oklahoma, and by such statement all lawful acts and
3 activities shall be within the purposes of the
4 corporation, except for express limitations, if any,
5 and

6 c. Each business entity owning, acquiring or otherwise
7 obtaining or leasing any agricultural land in this
8 state or forming under the Oklahoma General
9 Corporation Act shall specifically provide in their
10 stated purpose, or in an amended purpose, in whole or
11 in part, that such business entity owns, is acquiring,
12 or is otherwise obtaining or leasing agricultural land
13 in this state or is engaged in the business of farming
14 or ranching;

15 4. If the corporation is to be authorized to issue only one
16 class of stock, the total number of shares of stock which the
17 corporation shall have authority to issue and the par value of each
18 of such shares, or a statement that all such shares are to be
19 without par value. If the corporation is to be authorized to issue
20 more than one class of stock, the certificate of incorporation shall
21 set forth the total number of shares of all classes of stock which
22 the corporation shall have authority to issue and the number of
23 shares of each class, and shall specify each class the shares of
24 which are to be without par value and each class the shares of which
25 are to have par value and the par value of the shares of each such
26 class. The provisions of this paragraph shall not apply to
27 corporations which are not organized for profit and which are not to
28 have authority to issue capital stock. In the case of such
29 corporations, the fact that they are not to have authority to issue
30 capital stock shall be stated in the certificate of incorporation;

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

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

6 7. If the corporation is not for profit:

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

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

11 c. the number of trustees or directors to be elected at
12 the first meeting, and

13 d. in the event the corporation is a church, the street
14 address of the location of the church.

15 The restriction on affording pecuniary gain to members shall not
16 prevent a not-for-profit corporation operating as a cooperative from
17 rebating excess revenues to patrons who may also be members.

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

22 1. Any provision for the management of the business and for the
23 conduct of the affairs of the corporation, and any provision
24 creating, defining, limiting and regulating the powers of the
25 corporation, the directors, and the shareholders, or any class of
26 the shareholders, or the members of a nonstock corporation, if such
27 provisions are not contrary to the laws of this state. Any
28 provision which is required or permitted by any provision of the
29 Oklahoma General Corporation Act to be stated in the bylaws may
30 instead be stated in the certificate of incorporation;

31 2. The following provisions, in substantially the following
32 form: "Whenever a compromise or arrangement is proposed between

1 this corporation and its creditors or any class of them and/or
2 between this corporation and its shareholders or any class of them,
3 any court of equitable jurisdiction within the State of Oklahoma, on
4 the application in a summary way of this corporation or of any
5 creditor or shareholder thereof or on the application of any
6 receiver or receivers appointed for this corporation under the
7 provisions of Section 1106 of this title or on the application of
8 trustees in dissolution or of any receiver or receivers appointed
9 for this corporation under the provisions of Section 1100 of this
10 title, may order a meeting of the creditors or class of creditors,
11 and/or of the shareholders or class of shareholders of this
12 corporation, as the case may be, to be summoned in such manner as
13 the court directs. If a majority in number representing three-
14 fourths (3/4) in value of the creditors or class of creditors,
15 and/or of the shareholders or class of shareholders of this
16 corporation, as the case may be, agree to any compromise or
17 arrangement and to any reorganization of this corporation as a
18 consequence of such compromise or arrangement, the compromise or
19 arrangement and the reorganization, if sanctioned by the court to
20 which the application has been made, shall be binding on all the
21 creditors or class of creditors, and/or on all the shareholders or
22 class of shareholders, of this corporation, as the case may be, and
23 also on this corporation.";

24 3. Such provisions as may be desired granting to the holders of
25 the stock of the corporation, or the holders of any class or series
26 of a class thereof, the preemptive right to subscribe to any or all
27 additional issues of stock of the corporation of any or all classes
28 or series thereof, or to any securities of the corporation
29 convertible into such stock. No shareholder shall have any
30 preemptive right to subscribe to an additional issue of stock or to
31 any security convertible into such stock unless, and except to the
32 extent that, such right is expressly granted to him in the

1 certificate of incorporation. Preemptive rights, if granted, shall
2 not extend to fractional shares;

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

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

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

17 7. A provision eliminating or limiting the personal liability
18 of a director to the corporation or its shareholders for monetary
19 damages for breach of fiduciary duty as a director, provided that
20 such provision shall not eliminate or limit the liability of a
21 director:

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

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

27 c. under Section 1053 of this title; or

28 d. for any transaction from which the director derived an
29 improper personal benefit.

30 No such provision shall eliminate or limit the liability of a
31 director for any act or omission occurring prior to the date when
32 such provision becomes effective.

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

4 SECTION 10. RECODIFICATION 18 O.S. 1991, Sections 955,
5 as last amended by Section 3 of this act, 954, as last amended by
6 Section 4 of this act, 952, as amended by Section 5 of this act, and
7 953, as last amended by Section 6 of this act, shall be recodified
8 as Sections 957.3 through 957.6 of Title 18 of the Oklahoma
9 Statutes, respectively, unless there is created a duplication in
10 numbering.

11 SECTION 11. REPEALER 18 O.S. 1991, Sections 951 and 956,
12 are hereby repealed.

13 SECTION 12. This act shall become effective July 1, 1999.

14 SECTION 13. It being immediately necessary for the preservation
15 of the public peace, health and safety, an emergency is hereby
16 declared to exist, by reason whereof this act shall take effect and
17 be in full force from and after its passage and approval.

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19 47-1-6447 KSM 6/11/15
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