

STATE OF OKLAHOMA

2nd Session of the 47th Legislature (2000)

SENATE BILL 1076

By: Muegge

AS INTRODUCED

An Act relating to corporations; amending 18 O.S. 1991, Sections 951 and 954, as amended by Section 2, Chapter 61, O.S.L. 1994 (18 O.S. Supp. 1999, Section 954), which relate to prohibitions on forming corporations and exemptions; requiring the State Board of Agriculture to make the determination that the applicant meets certain requirements; requiring certain records to be kept; requiring the Secretary of State to provide certain lists to the State Department of Agriculture monthly; providing for exceptions; amending 18 O.S. 1991, Section 1005, which relates to incorporators and forming corporations; requiring certain corporations to list farming and ranching as a purpose of the incorporation; requiring the corporation to submit to the Secretary of State an approval of the State Department of Agriculture at the time of filing the Certificate of Incorporation; requiring an annual report to be filed with the State Department of Agriculture; stating information to be contained in the report; requiring the State Department of Agriculture to report annually to the President Pro Tempore of the Senate, the Speaker of the House of Representatives and the Governor; providing for certain forms; providing for rules to be promulgated; providing for codification; and providing an effective date.

SECTION 1. AMENDATORY 18 O.S. 1991, Section 951, is amended to read as follows:

Section 951. A. It is hereby declared to be the public policy of this state and shall be ~~the~~ a prohibition of ~~this act~~ Section 951 et seq. of this title that, notwithstanding the provisions of Section ~~5~~ 1005 of this ~~act~~ title, no foreign corporation shall be formed or licensed under the Oklahoma General Corporation Act for the purpose of engaging in farming or ranching or for the purpose of owning or leasing any interest in land to be used in the business of farming or ranching. A domestic corporation may, however, be formed

under the Oklahoma General Corporation Act to engage in such activity if the following requirements are met by that domestic corporation:

1. There shall be no shareholders other than ~~(a)~~:

a. natural persons; ~~(b)~~

b. estates; ~~(c)~~

c. trustees of trusts for the benefit of natural persons, if such trustees are either ~~(i)~~:

(1) natural persons, or ~~(ii)~~

(2) banks or trust companies which either have their principal place of business in Oklahoma or are organized under the laws of the State of Oklahoma; or ~~(d)~~

d. corporations owned by no shareholders other than those described in ~~paragraph 1 (a), (b) or (c)~~ subparagraphs a, b or c of this ~~section~~ paragraph and meeting the requirements of paragraph 3 of this ~~section~~ subsection.

2. Not more than thirty-five percent (35%) of the corporation's annual gross receipts shall be from any source other than ~~(a)~~:

a. farming or ranching or both, as the case may be, or ~~(b)~~

b. allowing others to extract from the corporate lands any minerals underlying the same, including, but not limited to, oil and gas. Provided, however, in the event a corporation does not comply with the thirty-five percent (35%) annual gross receipt test, then, in that event the corporation may furnish records of its gross receipts for each of the previous five (5) years, or for each year that it has been in existence if less than five (5) years, and the average of said annual gross receipts shall be used in lieu of

the corporation's annual gross receipts for purposes of complying with this section.

3. Except as otherwise provided in this paragraph, there shall not be more than ten shareholders unless said shareholders in excess of ten are related as lineal descendants or are or have been related by marriage to lineal descendants or persons related to lineal descendants by adoption or any combination of same. For a corporation incorporated for the purpose of breeding horses, there shall not be more than twenty-five shareholders.

4. Certificates of incorporation for ~~domestic~~ corporations which intend to engage in farming or ranching or owning or leasing any interest in land to be used in the business of farming or ranching shall initially be ~~approved by~~ submitted to the State Board of Agriculture concerning the purpose prior to filing in the office of the Secretary of State. ~~No stated purpose is to be disapproved by the Board of Agriculture unless such stated purpose violates existing civil or criminal code~~ The corporation shall, at the same time, submit the information required by Section 3 of this act. The State Board of Agriculture shall make a determination as to whether or not the corporation meets the requirements set forth in paragraphs 1, 2 and 3 of this subsection or are exempt from the provisions of Section 951 et seq. of this title pursuant to Section 954 of this title. The Department shall approve the certificate for filing with the Secretary of State unless it determines that the corporation is prohibited by law from engaging in the type of farming or ranching operations proposed.

B. The Secretary of State shall provide the State Department of Agriculture a list of corporations registering in the state that list farming or ranching or owning or leasing any interest in land to be used in the business of farming or ranching at least ~~weekly~~ monthly.

SECTION 2. AMENDATORY 18 O.S. 1991, Section 954, as amended by Section 2, Chapter 61, O.S.L. 1994 (18 O.S. Supp. 1999, Section 954), is amended to read as follows:

Section 954. The Except as provided in paragraph 4 of subsection A of Section 951 of this title, the provisions of this act, Section 951 et seq. of this title, shall not apply where a corporation, either domestic or foreign:

1. Engages in research and/or feeding arrangements or operations concerned with the feeding of livestock or poultry, but only to the extent of such research and/or feeding arrangements or such livestock or poultry operations; ~~or~~

2. Engages in operations concerned with the production and raising of livestock or poultry for sale or use as breeding stock and including only directly related operations, such as breeding or feeding livestock or poultry which are not selected or sold as breeding stock; ~~or~~

3. Engages in poultry and/or swine operations, including only directly related operations, such as operating hatcheries, facilities for the production of breeding stock, feed mills, processing facilities, and providing supervisory, technical and other assistance to any other persons performing such services on behalf of the corporation; ~~or~~

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

5. Whose corporate purpose is charitable or eleemosynary; or

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

SECTION 3. AMENDATORY 18 O.S. 1991, Section 1005, is amended to read as follows:

Section 1005.

INCORPORATORS; HOW CORPORATION FORMED; PURPOSES

A. Any person, partnership, association or corporation, singly or jointly with others, and without regard to ~~his or their~~ residence, domicile or state of incorporation, may incorporate or organize a corporation pursuant to the provisions of the Oklahoma General Corporation Act by filing with the Secretary of State a certificate of incorporation which shall be executed, acknowledged and filed in accordance with the provisions of Section 7 1007 of this ~~act~~ title; provided, however, at least three ~~(3)~~ persons, partnerships, associations, or corporations, or any combination thereof, shall be required to incorporate as a not for profit corporation pursuant to the provisions of the Oklahoma General Corporation Act.

B. A corporation may be incorporated or organized pursuant to the provisions of the Oklahoma General Corporation Act to conduct or promote any lawful business or purposes, except as may otherwise be provided by the Constitution or other law of this state. In order to enable the Secretary of State to provide the reports required in subsection B of Section 951 of this title, if any of the purposes of the corporation are farming or ranching, the corporation shall be required to list farming or ranching as a purpose of the incorporation.

C. If the corporation lists farming and ranching as a purpose of the corporation, it shall submit to the Secretary of State the approval of the State Department of Agriculture required by Section 951 of this title at the time of filing the Certificate of Incorporation.

~~C.~~ D. Corporations for constructing, maintaining and operating public utilities, whether in or outside of this state, may be organized pursuant to the provisions of the Oklahoma General Corporation Act, but corporations for constructing, maintaining and operating public utilities within this state shall be subject to, in

addition to the provisions of the Oklahoma General Corporation Act, the special provisions and requirements of Title 17 of the Oklahoma Statutes applicable to such corporations.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-4.1 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. Every corporation in Oklahoma that engages in farming or ranching, whether or not farming or ranching is listed as a purpose in their articles of incorporation, shall file an annual report no later than March 1 of each year with the State Department of Agriculture which shall contain, as a minimum, the following information:

1. Name and address of the corporation;
2. Name and address of the individual in charge of the farming or ranching operation;
3. Volume and type of commodity produced;
4. Number of animal units by species and weights;
5. As of December 31 of the preceding year, the number of acres leased or owned by the operation which are used for farming or ranching purposes;
6. The number of acres the corporation intends to acquire within the next year; and
7. If a corporation is exempt under the provisions of Section 954 of Title 18 of the Oklahoma Statutes, the specific exemption shall be stated.

B. The Department shall compile the information submitted and provide a report annually to the Governor, President Pro Tempore of the Senate and the Speaker of the House of Representatives.

C. The Department shall create the necessary form to report the information required and shall promulgate rules to implement the provisions of this section.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-4.2 of Title 2, unless there is created a duplication in numbering, reads as follows:

All domestic corporations applying for status as a farming or ranching corporation must:

1. Meet all of the requirements stated in paragraphs 1, 2, and 3 of subsection A of Section 951 of Title 18 of the Oklahoma Statutes; or

2. Qualify under the exemptions listed in Section 954 of Title 18 of the Oklahoma Statutes.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-4.3 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. All applications for a certificate of qualification by foreign corporations containing any language referring to activities which may be defined as farming or ranching, after January 1, 2001, must be reviewed by the State Department of Agriculture.

B. All foreign corporations claiming an exemption under any of the subsections found in Section 954 of Title 18 of the Oklahoma Statutes, must submit to the Department for review and consideration all information necessary to verify compliance with the exemption and rules of the Board. A purpose statement in their application for a certificate of qualification reciting only the terms that they will "engage in any lawful act or activity for which corporations may be organized" will not be adequate or acceptable. All applications which are approved will be forwarded to the Oklahoma Secretary of State for processing. In the event the State Board of Agriculture finds that the corporation does not qualify for an exemption, a notice of denial and explanation shall be sent to the foreign corporation.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-4.4 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. Any domestic corporation holding a certificate of incorporation for farming or ranching approved by the State Department of Agriculture prior to January 1, 2001, found by the Department to be in violation of Section 951 et seq. of Title 18 of the Oklahoma Statutes following a valid complaint shall be notified in writing by the Department of the violation and provided an opportunity to correct their original application for a certificate of incorporation. Those parties shall have ninety (90) calendar days to correct their original application for a certificate of incorporation by applying under the provisions for a general corporation or provide a response including sufficient information to verify their farming or ranching qualification or exemptions. Failure to correct or substantiate the information on the original application shall be grounds for removal of approval by the Department and submission of the matter to the Office of the Secretary of State.

B. Any domestic corporation holding a certificate of incorporation for farming or ranching approved by the Department after January 1, 2001, changing the nature of the business or purposes to be conducted shall notify the Department within thirty (30) calendar days of the change and apply for a new certificate of incorporation. Those entities which fail to notify the Department or apply for a new certificate of incorporation and are found in violation of these rules, may be subject to administrative penalties and/or removal of approval by the Department and submission of the matter to the Office of the Secretary of State.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-4.5 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. Any foreign corporation issued a certificate of qualification assumed to be exempt under Section 954 of Title 18 of the Oklahoma Statutes, prior to January 1, 2001, shall be required to submit information regarding current assets and property owned, leased, or controlled within Oklahoma. Any change in circumstances including, but not limited to the acquisition of land by purchase, lease, or other method, expansion of existing facilities, or modification of the nature or purpose of the business must be reported to the State Department of Agriculture for review and consideration of the requirements in Section 954 of Title 18 of the Oklahoma Statutes. Failure to provide accurate, required information shall be grounds for administrative penalties and may result in civil or criminal actions including, but not limited to, the liquidation of assets and land.

B. Foreign corporations engaged in farming or ranching issued a certificate of qualification after January 1, 2001, not reviewed or considered by the Department, following a valid complaint, shall be issued a notice of violation by the Department. Failure to provide accurate and necessary information in the original application of a certificate of qualification shall be grounds for administrative penalties and may result in civil or criminal actions including, but not limited to, the liquidation of assets and land.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-4.6 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. Only signed, written complaints from bona fide residents of Oklahoma, elected officials, or state agencies about corporations or business entities engaged in farming or ranching may be investigated by the Department.

B. Any corporation or business entity engaged in farming or ranching receiving a notice of violation or removal of approval by the State Department of Agriculture regarding a certificate of

incorporation or qualification must make a written request for a hearing before the Board of Agriculture within twenty (20) calendar days of receipt of the notice of alleged violation. All hearing requests received within the specified time period shall be held in accordance with the provisions of the Administrative Procedures Act.

SECTION 10. This act shall become effective November 1, 2000.

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