

ENROLLED SENATE  
BILL NO. 1511

By: Coffee of the Senate

and

Vaughn of the House

An Act relating to corporations; amending 18 O.S. 2001, Sections 866, 1006, 1007, 1013, 1022, 1025, 1027, 1038, 1039, 1057, 1060, 1063, 1064, 1065, 1068, 1070, 1073, 1080, 1081, 1082, 1083, 1084, 1085, 1086, 1090.2, 1090.3, 1090.5, 1091, 1119, 1120, 1131, 2004, 2005, 2006, 2007, 2010, 2012.1, 2013, 2017, 2018, 2020, 2023, 2025, 2033, 2034, 2036, 2037, 2040, 2049, 2054, 2054.1 and 2054.2, which relate to nonprofit corporations, certificate of incorporation, registered agent, bylaws, resident agent, board of directors, stock options and certificates, voting rights, inspection of books and records, vacancies and election of directorships, consent of shareholders, restated certificate of incorporation, merger or consolidation, business combinations, conversion, appraisal rights, revocation of voluntary dissolution, renewal, revival, extension and restoration of certificate of incorporation, additional requirements, articles of organization, limitation of liability of member or manager, management of company; managers, voting rights, member contributions, allocation of profits and losses, assignment of membership interest, withdrawal of member, judgment creditors, dissolution, distribution of assets, foreign limited liability company, merger or consolidation and conversion; adding federal law reference for tax-exempt status; modifying information required on certificate of incorporation; adding requirement for filing of certain instrument; deleting option to confer certain power; adding certain partnership pertaining to registered agents; allowing Secretary of State to establish filing date under certain circumstances; defining term; requiring specified endorsement on certain affidavit; stating exception; allowing certain entity to serve as registered agent; modifying procedure for change of address of certain entity; updating statutory references; clarifying language; clarifying eligibility for board of directors for certain entity; allowing board to create certain committee; allowing corporation to submit certain matter to vote; requiring inclusion of certain information in certificate of incorporation; allowing board to authorize certain acts by officers; prohibiting

corporation to issue certain certificate; modifying reference; stating applicability of certain provisions; allowing electronic submission of certain ballot; disallowing examination of certain material by certain shareholders; modifying definitions; permitting copying from certain material under specified circumstances; stating burden of proof for certain determination; expanding jurisdiction of district court to determine validity of certain actions; including specified party eligible to take certain action; stating effective notice; establishing procedure to object to certain notice; allowing omission of certain information from specified certificate; modifying information to be included in certain agreement; modifying conditions for certain merger without specified vote; clarifying standing of certain shareholder; requiring statement of cancellation of shares under certain circumstances; modifying certain exceptions; prohibiting amendment of certain bylaw; requiring filing of certain certificate under certain circumstances; clarifying certain filing requirements; modifying perfection of certain appraisal rights; defining term; stating applicability of certain provisions; modifying requirements for filing notice of certain action; stating effect of certain business formation; requiring inclusion of certain information in articles of organization; specifying manner of execution of certain articles; establishing effective date of certain matters; allowing publication of certain list; authorizing managers of limited liability companies to exercise certain powers; stating permissible matters for inclusion in operating agreement; clarifying manner of certain voting; establishing membership requirements for certain company; clarifying entities for allocation and distribution; permitting assignment of certain rights; prohibiting conversion of charging orders into certain interests; stating consequences of death of certain member; stating time for dissolution of certain company; establishing liability for certain distribution; modifying certain exceptions; providing for distribution of certain assets under specified circumstances; adding specified information to articles of conversion; construing provision; stating effects of conversion on certain liabilities; permitting inclusion of specified matters in certain operating agreement; amending 54 O.S. 2001, Sections 1-901, 1-902, 1-903, 1-904, 310.2 and 310.3, which relate to partnerships and conversion; modifying definitions; specifying circumstances allowing conversion of partnerships; specifying procedures for certain conversion; stating effects of certain conversion; requiring consent of partner under certain circumstances; providing exceptions; providing for distribution of

certain assets under specified circumstances; construing provision; requiring filing of certain certificate under specified circumstances; stating effect of certain filing; 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. 2001, Section 866, is amended to read as follows:

Section 866. A. Except as otherwise provided by this section, no member of the board of directors of a nonprofit corporation that holds a valid exemption from federal income taxation issued pursuant to Section 501(a) of the Internal Revenue Code (26 U.S.C. Section 501(a)) or Section 528 of the Internal Revenue Code (26 U.S.C. Section 528) and is listed as an exempt organization in Section 501(c) of the Internal Revenue Code (26 U.S.C. Section 501(c)) or files as such pursuant to Section 528 of the Internal Revenue Code shall be held personally liable for damages resulting from:

1. any negligent act or omission of an employee of the nonprofit corporation; or
2. any negligent act or omission of another director.

B. The immunity provided by subsection A of this section shall not extend to intentional torts or grossly negligent acts or omissions personal to any director of the nonprofit corporation.

C. If a nonprofit corporation transfers assets to a member of the board of directors of such corporation or to another nonprofit corporation in order to avoid claims against corporate assets resulting from a judgment rendered as a result of a suit to recover damages for the negligence of the corporation, a corporate employee or a director, the director to whom the asset is transferred or any director of the corporation from which assets are transferred to avoid such claims may be held personally liable for any such judgment rendered and the immunity provided by this section shall be of no force or effect.

D. The provisions of this section shall only apply to suits for recovery of damages based upon causes of action that accrue on or after the effective date of this act.

SECTION 2. AMENDATORY 18 O.S. 2001, Section 1006, is amended to read as follows:

Section 1006.

CERTIFICATE OF INCORPORATION; CONTENTS

A. The certificate of incorporation shall set forth:

1. The name of the corporation which shall contain one of the words "association", "company", "corporation", "club", "foundation", "fund", "incorporated", "institute", "society", "union", "syndicate", or "limited" or abbreviations thereof, with or without punctuation, or words or abbreviations thereof, with or without punctuation, of like import of foreign countries or jurisdictions; provided that such abbreviations are written in Roman characters or letters, and which shall be such as to distinguish it upon the records in the Office of the Secretary of State from:

- a. ~~names of other corporations organized under the laws of this state,~~ whether domestic or foreign, then existing or which existed at any time during the preceding three (3) years,
- b. ~~names of foreign corporations registered in accordance with the laws of this state then existing or which existed at any time during the preceding three (3) years,~~
- e. ~~names of then existing limited partnerships whether organized pursuant to the laws of this state or registered as foreign limited partnerships in this state~~ general or limited, or domestic or foreign, then existing or which existed at any time during the preceding three (3) years,
- c. names of limited liability companies, whether domestic or foreign, then existing or which existed at any time during the preceding three (3) years,
- d. trade names or fictitious names filed with the Secretary of State, or
- e. corporate, limited liability company or limited partnership names reserved with the Secretary of State, ~~or~~
- f. ~~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;~~

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

3. The nature of the business or purposes to be conducted or promoted. It shall be sufficient to state, either alone or with other businesses or purposes, that the purpose of the corporation is to engage in any lawful act or activity for which corporations may be organized under the general corporation law of Oklahoma, and by such statement all lawful acts and activities shall be within the purposes of the corporation, except for express limitations, if any;

4. If the corporation is to be authorized to issue only one class of stock, the total number of shares of stock which the

corporation shall have authority to issue and the par value of each of such shares, or a statement that all such shares are to be without par value. If the corporation is to be authorized to issue more than one class of stock, the certificate of incorporation shall set forth the total number of shares of all classes of stock which the corporation shall have authority to issue and the number of shares of each class, and shall specify each class the shares of which are to be without par value and each class the shares of which are to have par value and the par value of the shares of each such class. The provisions of this paragraph shall not apply to corporations which are not organized for profit and which are not to have authority to issue capital stock. In the case of such corporations, the fact that they are not to have authority to issue capital stock shall be stated in the certificate of incorporation;

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

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

7. If the corporation is not for profit:

- a. that the corporation does not afford pecuniary gain, incidentally or otherwise, to its members as such,
- b. the name and mailing address of each trustee or director,
- c. the number of trustees or directors to be elected at the first meeting, and
- d. in the event the corporation is a church, the street address of the location of the church.

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

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

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

2. The following provisions, in substantially the following form: "Whenever a compromise or arrangement is proposed between this corporation and its creditors or any class of them and/or between this corporation and its shareholders or any class of them, any court of equitable jurisdiction within the State of Oklahoma, on the application in a summary way of this corporation or of any creditor or shareholder thereof or on the application of any receiver or receivers appointed for this corporation under the provisions of Section 1106 of this title or on the application of trustees in dissolution or of any receiver or receivers appointed for this corporation under the provisions of Section 1100 of this title, may order a meeting of the creditors or class of creditors, and/or of the shareholders or class of shareholders of this corporation, as the case may be, to be summoned in such manner as the court directs. If a majority in number representing three-fourths (3/4) in value of the creditors or class of creditors, and/or of the shareholders or class of shareholders of this corporation, as the case may be, agree to any compromise or arrangement and to any reorganization of this corporation as a consequence of such compromise or arrangement, the compromise or arrangement and the reorganization, if sanctioned by the court to which the application has been made, shall be binding on all the creditors or class of creditors, and/or on all the shareholders or class of shareholders, of this corporation, as the case may be, and also on this corporation.";

3. Such provisions as may be desired granting to the holders of the stock of the corporation, or the holders of any class or series of a class thereof, the preemptive right to subscribe to any or all additional issues of stock of the corporation of any or all classes or series thereof, or to any securities of the corporation convertible into such stock. No shareholder shall have any preemptive right to subscribe to an additional issue of stock or to any security convertible into such stock unless, and except to the extent that, such right is expressly granted to him in the certificate of incorporation. Preemptive rights, if granted, shall not extend to fractional shares;

4. Provisions requiring, for any corporate action, the vote of a larger portion of the stock or of any class or series thereof, or of any other securities having voting power, or a larger number of the directors, than is required by the provisions of this act;

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

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

7. A provision eliminating or limiting the personal liability of a director to the corporation or its shareholders for monetary damages for breach of fiduciary duty as a director, provided that

such provision shall not eliminate or limit the liability of a director:

- a. for any breach of the director's duty of loyalty to the corporation or its shareholders,
- b. for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law,
- c. under Section 1053 of this title, or
- d. for any transaction from which the director derived an improper personal benefit.

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

C. It shall not be necessary to set forth in the certificate of incorporation any of the powers conferred on corporations by the provisions of this act.

SECTION 3. AMENDATORY 18 O.S. 2001, Section 1007, is amended to read as follows:

Section 1007.

EXECUTION, ACKNOWLEDGMENT, FILING AND EFFECTIVE

DATE OF ORIGINAL CERTIFICATE OF INCORPORATION

AND OTHER INSTRUMENTS; EXCEPTIONS

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

1. The certificate of incorporation and any other instrument to be filed before the election of the initial board of directors, if the initial directors were not named in the certificate of incorporation, shall be signed by the incorporator or incorporators, or in case of any other instrument, the incorporator's or incorporators' successors and assigns. If any incorporator is not available by reason of death, incapacity, unknown address, or refusal or neglect to act, then any other instrument may be signed, with the same effect as if the incorporator had signed it, by any person for whom or on whose behalf the incorporator, in executing the certificate of incorporation, was acting directly or indirectly as employee or agent; provided that the other instrument shall state that the incorporator is not available and the reason therefor, that the incorporator in executing the certificate of incorporation was acting directly or indirectly as employee or agent for or on behalf of the person, and that the person's signature on the instrument is otherwise authorized and not wrongful;

2. All other instruments shall be executed:

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

B. Whenever any provision of this act requires any instrument to be acknowledged, that requirement is satisfied by either:

1. The formal acknowledgment by the person or one of the persons signing the instrument that it is his or her act and deed or the act and deed of the corporation, as the case may be, and that the facts stated therein are true. The acknowledgment shall be made before a person who is authorized by the law of the place of execution to take acknowledgments of deeds and who shall affix a seal of office, if any, to the instrument; or

2. The 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 penalty of perjury, that the instrument is his or her act and deed or the act and deed of the corporation, as the case may be, and that the facts stated therein are true.

C. Whenever any provision of this act requires any instrument to be filed in accordance with the provisions of this section or with the provisions of this act, the requirement means that:

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

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

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

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

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

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

F. Whenever any instrument authorized to be filed with the Secretary of State under any provision of this title has been so filed and is an inaccurate record of the corporate action therein referred to, or was defectively or erroneously executed, sealed, or acknowledged, the instrument may be corrected by filing with the Secretary of State a certificate of correction of the instrument which shall be executed, acknowledged and filed in accordance with the provisions of this section. The certificate of correction shall specify the inaccuracy or defect to be corrected and shall set forth the portion of the instrument in corrected form. The corrected instrument shall be effective as of the date the original instrument was filed, except as to those persons who are substantially and adversely affected by the correction and as to those persons the corrected instrument shall be effective from the filing date of the corrected instrument.

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

preclearance for filing, the acceptance for filing, or the filing and indexing of such instrument.

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

I. 1. If:

- a. (1) together with the actual delivery of an instrument and tender of the required taxes and fees, there is delivered to the Secretary of State a separate affidavit, which in its heading shall be designated as an affidavit of extraordinary condition, attesting, on the basis of personal knowledge of the affiant or a reliable source of knowledge identified in the affidavit, that an earlier effort to deliver the instrument and tender taxes and fees was made in good faith, specifying the nature, date and time of the good faith effort and requesting that the Secretary of State establish the date and time as the filing date of the instrument, or
- (2) upon the actual delivery of an instrument and tender of the required taxes and fees, the Secretary of State in his or her discretion provides a written waiver of the requirement for an affidavit stating that it appears to the Secretary of State that an earlier effort to deliver the instrument and tender the taxes and fees was made in good faith and specifying the date and time of the effort, and
- b. the Secretary of State determines that an extraordinary condition existed at that date and time, that the earlier effort was unsuccessful as a result of the existence of an extraordinary condition, and that the actual delivery and tender were made within a reasonable period, not to exceed two (2) business days, after the cessation of the extraordinary condition,

then the Secretary of State may establish the date and time as the filing date of the instrument. No fee shall be paid to the Secretary of State for receiving an affidavit of extraordinary condition.

2. For purposes of this subsection, an extraordinary condition means: any emergency resulting from an attack on, invasion or occupation by foreign military forces of, or disaster, catastrophe, war or other armed conflict, revolution or insurrection, or rioting or civil commotion in, the United States or a locality in which the Secretary of State conducts its business or in which the good faith effort to deliver the instrument and tender the required taxes and

fees is made, or the immediate threat of any of the foregoing; or any malfunction or outage of the electrical or telephone service to the Secretary of State's office, or weather or other condition in or about a locality in which the Secretary of State conducts its business, as a result of which the Secretary of State's office is not open for the purpose of the filing of instruments under this act or the filing cannot be effected without extraordinary effort. The Secretary of State may require such proof as it deems necessary to make the determination required under subparagraph b of paragraph 1 of this subsection, and any determination shall be conclusive in the absence of actual fraud.

3. If the Secretary of State establishes the filing date of an instrument pursuant to this subsection, the date and time of delivery of the affidavit of extraordinary condition or the date and time of the Secretary of State's written waiver of the affidavit shall be endorsed on the affidavit or waiver and the affidavit or waiver, so endorsed, shall be attached to the filed instrument to which it relates. The filed instrument shall be effective as of the date and time established as the filing date by the Secretary of State pursuant to this subsection, except as to those persons who are substantially and adversely affected by the establishment and, as to those persons, the instrument shall be effective from the date and time endorsed on the affidavit of extraordinary condition or written waiver attached thereto.

SECTION 4. AMENDATORY 18 O.S. 2001, Section 1013, is amended to read as follows:

Section 1013.

#### BYLAWS

A. The original or other bylaws of a corporation may be adopted, amended or repealed by the incorporators, by the initial directors if they were named in the certificate of incorporation, or, before a corporation has received any payment for any of its stock, by its board of directors. After a corporation has received any payment for any of its stock, except as otherwise provided in its certificate of incorporation, the power to adopt, amend or repeal bylaws shall be in the board of directors, or, in the case of a nonstock corporation, in its governing body; ~~provided, however, any corporation, in its certificate of incorporation, may confer the power to adopt, amend or repeal bylaws upon the shareholders entitled to vote or, in the case of a nonstock corporation, upon its members entitled to vote. The fact that such power has been so conferred upon the shareholders or members, as the case may be, shall not divest the board of directors or governing body of the power, nor limit their power to adopt, amend or repeal bylaws.~~

B. The bylaws may contain any provision, not inconsistent with law or with the certificate of incorporation, relating to the business of the corporation, the conduct of its affairs, and its rights or powers or the rights or powers of its shareholders, directors, officers or employees.

SECTION 5. AMENDATORY 18 O.S. 2001, Section 1022, is amended to read as follows:

Section 1022.

REGISTERED AGENT IN STATE; RESIDENT AGENT

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

1. The domestic corporation itself;
2. An individual resident of this state; or
3. A domestic or qualified foreign corporation, limited liability company, limited liability partnership, 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. Every foreign corporation transacting business in this state shall have and maintain the Secretary of State as its registered agent in this state. In addition, such foreign corporation may have and maintain in this state a registered agent, which agent may be either:

1. An individual resident of this state; or
2. A domestic or qualified foreign corporation, limited liability company, limited liability partnership, 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. If such additional registered agent is designated, service of process shall be on such agent and not on the Secretary of State.

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

SECTION 6. AMENDATORY 18 O.S. 2001, Section 1025, is amended to read as follows:

Section 1025.

RESIGNATION OF REGISTERED AGENT COUPLED

WITH APPOINTMENT OF SUCCESSOR

The registered agent of one or more corporations may resign and appoint a successor registered agent by filing in the name of each affected corporation a certificate with the Secretary of State, stating the name and address of the successor agent, in accordance with the provisions of paragraph 2 of subsection A of Section ~~6~~ 1006 of this ~~act~~ title. There shall be attached to ~~each such~~ the certificate a statement of the affected corporation ratifying and approving such change of registered agent. ~~Each such~~ The statement shall be executed and acknowledged in accordance with the provisions of Section ~~7~~ 1007 of this ~~act~~ title. Upon ~~such~~ the filing, the successor registered agent ~~shall become~~ becomes the registered agent of each corporation ~~which~~ that has ratified and approved each substitution and the successor registered agent's address, as stated in each certificate, ~~shall become~~ becomes the address of each such corporation's registered office in this state. The Secretary of State shall then issue his or her certificate that the successor registered agent has become the registered agent of the corporations so ratifying and approving ~~such~~ the change, and setting out the names of such corporations.

SECTION 7. AMENDATORY 18 O.S. 2001, Section 1027, is amended to read as follows:

Section 1027.

BOARD OF DIRECTORS; POWERS; NUMBER; QUALIFICATIONS; TERMS

AND QUORUM; COMMITTEES; CLASSES OF DIRECTORS; NOT FOR PROFIT

CORPORATIONS; RELIANCE UPON BOOKS; ACTION WITHOUT MEETING; ETC.

A. The business and affairs of every corporation organized in accordance with the provisions of the Oklahoma General Corporation Act shall be managed by or under the direction of a board of directors, except as may be otherwise provided for in this act or in the corporation's certificate of incorporation. If any provision is made in the certificate of incorporation, the powers and duties conferred or imposed upon the board of directors by the provisions of this act shall be exercised or performed to the extent and by the person or persons stated in the certificate of incorporation.

B. The board of directors of a corporation shall consist of one or more members, each of whom shall be a natural person. The number of directors shall be fixed by or in the manner provided for in the bylaws, unless the certificate of incorporation fixes the number of directors, in which case a change in the number of directors shall be made only by amendment of the certificate. Directors need not be shareholders unless so required by the certificate of incorporation or the bylaws. The certificate of incorporation or bylaws may prescribe other qualifications for directors. Each director shall hold office until a successor is elected and qualified or until his or her earlier resignation or removal. Any director may resign at any time upon notice given in writing or by electronic transmission to the corporation. A majority of the total number of directors shall constitute a quorum for the transaction of business unless the

certificate of incorporation or the bylaws require a greater number. Except as provided in subsection G of this section, neither the certificate of incorporation nor the bylaws may provide that a quorum may be less than one-third (1/3) of the total number of directors. The vote of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors unless the certificate of incorporation or the bylaws shall require a vote of a greater number.

C. 1. The board of directors may designate one or more committees consisting of one or more of the directors of the corporation. The board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. The bylaws may provide that in the absence or disqualification of a member of a committee, the member or members present at a meeting and not disqualified from voting, whether or not the member or members constitute a quorum, may unanimously appoint another member of the board of directors to act at the meeting in the place of any absent or disqualified member. Any committee, to the extent provided in the resolution of the board of directors, or in the bylaws of the corporation, shall have and may exercise all the powers and authority of the board of directors in the management of the business and affairs of the corporation, and may authorize the seal of the corporation to be affixed to all papers which may require it; but no committee shall have the power or authority to:

~~1. Approve~~

a. approve, adopt, or recommend to the shareholders any action or matter expressly required by this act to be submitted to shareholders for approval, ~~or~~

~~2. Adopt~~

b. adopt, amend, or repeal any bylaw of the corporation.

2. Unless otherwise provided in the certificate of incorporation, the bylaws or the resolution of the board of directors designating the committee, a committee may create one or more subcommittees, each subcommittee to consist of one or more members of the committee, and delegate to a subcommittee any or all of the powers and authority of the committee.

D. The directors of any corporation organized in accordance with the provisions of this act, by the certificate of incorporation or by an initial bylaw, or by a bylaw adopted by the board of directors and approved by a vote of the shareholders, may be divided into one, two, or three classes; the term of office of those of the first class to expire at the annual meeting next ensuing; of the second class one (1) year thereafter; of the third class two (2) years thereafter; and at each annual election held after classification and election, directors shall be chosen for a full term, as the case may be, to succeed those whose terms expire. The certificate of incorporation may confer upon holders of any class or series of stock the right to elect one or more directors who shall serve for the term, and have voting powers as shall be stated in the

certificate of incorporation. The terms of office and voting powers of the directors elected in the manner so provided in the certificate of incorporation may be greater than or less than those of any other director or class of directors. If the certificate of incorporation provides that directors elected by the holders of a class or series of stock shall have more or less than one vote per director on any matter, every reference in this act to a majority or other proportion of directors shall refer to a majority or other proportion of the votes of the directors.

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

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

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

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

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

4. Members of the board of directors of any corporation, or any committee designated by the board, may participate in a meeting of the board or committee by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear or otherwise communicate with each other. Participation in a meeting pursuant to the provisions of this subsection shall constitute presence in person at the meeting.

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

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

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

- a. unless the certificate of incorporation otherwise provides, in the case of a corporation whose board is classified as provided for in subsection D of this section, shareholders may effect such removal only for cause, or
- b. in the case of a corporation having cumulative voting, if less than the entire board is to be removed, no director may be removed without cause if the votes cast against the director's removal would be sufficient to elect the director if then cumulatively voted at an election of the entire board of directors, or, if there are classes of directors, at an election of the class of directors of which the director is a part.

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

I. A corporation may agree to submit a matter to a vote of its shareholders regardless of whether the board of directors determines at any time subsequent to approving the matter that the matter is no longer advisable and recommends that the shareholders reject or vote against the matter.

SECTION 8. AMENDATORY 18 O.S. 2001, Section 1038, is amended to read as follows:

Section 1038.

#### RIGHTS AND OPTIONS RESPECTING STOCK

A. Subject to any provisions in the certificate of incorporation, every corporation may create and issue, whether or not in connection with the issue and sale of any shares of stock or other securities of the corporation, rights or options entitling the holders thereof to purchase from the corporation any shares of its capital stock of any class or classes, such rights or options to be evidenced by or in such instrument or instruments as shall be approved by the board of directors.

B. The terms upon which, including the time or times, which may be limited or unlimited in duration, at or within which, and the price or prices, including any formula by which such price or prices may be determined, at which any such shares may be purchased from the corporation upon the exercise of any such right or option, shall be such as shall be stated in the certificate of incorporation, or in a resolution adopted by the board of directors providing for the creation and issue of such rights or options, and, in every case, shall be set forth or incorporated by reference in the instrument or instruments evidencing such rights or options. In the absence of actual fraud in the transaction, the judgment of the directors as to the consideration for the issuance of such rights or options and the sufficiency thereof shall be conclusive.

C. The board of directors may, by a resolution adopted by the board, authorize one or more officers of the corporation to do one or both of the following:

1. Designate officers and employees of the corporation or of any of its subsidiaries to be recipients of such rights or options created by the corporation; and

2. Determine the number of such rights or options to be received by such officers and employees;

provided, however, that the resolution so authorizing such officer or officers shall specify the total number of rights or options such officer or officers may so award. The board of directors may not authorize an officer to designate himself or herself as a recipient of any such rights or options.

D. In case the shares of stock of the corporation to be issued upon the exercise of such rights or options shall be shares having a par value, the price or prices so to be received therefor shall not be less than the par value thereof. In case the shares of stock so to be issued shall be shares of stock without par value, the consideration therefor shall be determined in the manner provided for in Section ~~34~~ 1034 of this ~~act~~ title.

SECTION 9. AMENDATORY 18 O.S. 2001, Section 1039, is amended to read as follows:

Section 1039.

#### STOCK CERTIFICATES, UNCERTIFICATED SHARES

The shares of a corporation shall be represented by certificates, provided that the board of directors of the corporation may provide by resolution or resolutions that some or all of any or all classes or series of its stock shall be uncertificated shares. Notwithstanding the adoption of any such resolution, shares represented by a certificate shall not become uncertificated shares until such certificate is surrendered to the corporation. Every holder of stock in a corporation shall be entitled to have a certificate signed by, or in the name of, the corporation by the chairman or vice-chairman of the board of

directors, or the president or vice-president, and by the treasurer or an assistant treasurer or the secretary or an assistant secretary of such corporation certifying and representing the number of shares owned by him in such corporation. Subject to applicable provisions of the Uniform Commercial Code - Investment Securities, such entitlement shall apply equally to a holder of uncertificated shares, notwithstanding the adoption of a resolution by the board of directors providing for the issuance of uncertificated shares, who makes written request of the corporation. Any or all the signatures on the certificate may be a facsimile. In case any officer, transfer agent, or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent, or registrar before such certificate is issued, it may be issued by the corporation with the same effect as if he were such officer, transfer agent or registrar at the date of issue. A corporation shall not have the power to issue a certificate in bearer form.

SECTION 10. AMENDATORY 18 O.S. 2001, Section 1057, is amended to read as follows:

Section 1057.

VOTING RIGHTS OF SHAREHOLDERS; PROXIES; LIMITATIONS

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

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

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

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

2. A shareholder may authorize another person or persons to act for him or her as proxy by transmitting or authorizing the transmission of a telegram, cablegram, or other means of electronic

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

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

E. A duly executed proxy shall be irrevocable if it states that it is irrevocable and if, and only as long as, it is coupled with an interest sufficient in law to support an irrevocable power. A proxy may be made irrevocable regardless of whether the interest with which it is coupled is an interest in the stock itself or an interest in the corporation generally.

SECTION 11. AMENDATORY 18 O.S. 2001, Section 1060, is amended to read as follows:

Section 1060.

#### VOTING RIGHTS OF MEMBERS OF NONSTOCK

#### CORPORATIONS; QUORUM; PROXIES

A. The provisions of Sections 1056 through 1059 and 1061 of this title shall not apply to corporations not authorized to issue stock, except that subsection A of Section 1056 and subsections C and D of Section 1057 of this title shall apply to nonstock corporations, and, when so applied, all references therein to shareholders and to the board of directors shall be deemed to refer to the members and the governing body of a nonstock corporation, respectively.

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 (1/3) of the members of the corporation shall constitute a quorum at a meeting of the members;

2. In all matters other than the election of the governing body of the corporation, the affirmative vote of a majority of 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.

E. If authorized by the governing body, any requirement of a written ballot shall be satisfied by a ballot submitted by electronic transmission, provided that the electronic transmission shall either set forth or be submitted with information from which it can be determined that the electronic transmission was authorized by the member or proxy holder.

SECTION 12. AMENDATORY 18 O.S. 2001, Section 1063, is amended to read as follows:

Section 1063.

#### VOTING TRUSTS AND OTHER VOTING AGREEMENTS

A. One (1) or more shareholders, by agreement in writing, may deposit capital stock of an original issue with or transfer capital stock to any person or persons, or ~~corporation or corporations~~ entity or entities, authorized to act as trustee, for the purpose of vesting in the person or persons, ~~corporation or corporations~~ or entity or entities, who may be designated voting trustee, or voting trustees, the right to vote thereon for any period of time determined by the agreement upon the terms and conditions stated in the agreement. The agreement may contain any other lawful provisions not inconsistent with its purpose. After the filing of a

copy of the agreement in the registered office of the corporation in this state, which copy shall be open to the inspection of any shareholder of the corporation or any beneficiary of the trust under the agreement daily during business hours, certificates of stock or uncertificated stock shall be issued to the voting trustee or trustees to represent any stock of an original issue so deposited with the trustee or trustees, and any certificates of stock or uncertificated stock so transferred to the voting trustee or trustees shall be surrendered and canceled and new certificates or uncertificated stock shall be issued therefor to the voting trustee or trustees. In the certificate so issued, if any, it shall be stated that it is issued pursuant to the agreement and that fact shall also be stated in the stock ledger of the corporation. The voting trustee or trustees may vote the stock so issued or transferred during the period specified in the agreement. Stock standing in the name of the voting trustee or trustees may be voted either in person or by proxy. In voting the stock, the voting trustee or trustees shall incur no responsibility as shareholder, trustee, or otherwise, except for the trustee's or trustees' own individual malfeasance. In any case where two (2) or more persons or entities are designated as voting trustees, and the right and method of voting any stock standing in their names at any meeting of the corporation are not fixed by the agreement appointing the trustees, the right to vote the stock and the manner of voting it at the meeting shall be determined by a majority of the trustees, or if they be equally divided or the right and manner of voting the stock in any particular case, the vote of the stock shall be divided equally among the trustees.

B. Any amendment to a voting trust agreement shall be made by a written agreement, a copy of which shall be filed in the registered office of the corporation in this state.

C. An agreement between two (2) or more shareholders, if in writing and signed by the parties thereto, may provide that in exercising any voting rights, the shares held by them shall be voted as provided by the agreement, or as the parties may agree, or as determined in accordance with a procedure agreed upon by them.

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

SECTION 13. AMENDATORY 18 O.S. 2001, Section 1064, is amended to read as follows:

Section 1064.

LIST OF SHAREHOLDERS ENTITLED TO VOTE;

PENALTY FOR REFUSAL TO PRODUCE STOCK LEDGER

A. The officer who has charge of the stock ledger of a corporation shall prepare and make, at least ten (10) days before every meeting of shareholders, a complete list of the shareholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each shareholder and the number of shares

registered in the name of each shareholder. Nothing contained in this section shall require the corporation to include electronic mail addresses or other electronic contact information on the list. The list shall be open to the examination of any shareholder, for any purpose germane to the meeting for a period of at least ten (10) days prior to the meeting:

1. On a reasonably accessible electronic network; provided that the information required to gain access to the list is provided with the notice of the meeting; or

2. During ordinary business hours, at the principal place of business of the corporation. In the event that the corporation determines to make the list available on an electronic network, the corporation may take reasonable steps to ensure that the information is available only to shareholders of the corporation. If the meeting is to be held at a place, then the list shall also be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any shareholder who is present. If the meeting is to be held solely by means of remote communication, then the list shall also be open to the examination of any shareholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access the list shall be provided with the notice of the meeting.

B. Upon the willful neglect or refusal of the directors to produce such a list at any meeting for the election of directors held at a place, or to open such a list to examination on a reasonably accessible electronic network during any meeting for the election of directors held solely by means of remote communication, they shall be ineligible for election to any office at the meeting.

C. The stock ledger shall be the only evidence as to who are the shareholders entitled by this section to examine the ~~stock ledger, the list required by this section or the books of the corporation,~~ or to vote in person or by proxy at any meeting of shareholders.

SECTION 14. AMENDATORY 18 O.S. 2001, Section 1065, is amended to read as follows:

Section 1065.

#### INSPECTION OF BOOKS AND RECORDS

A. As used in this section:

1. "Shareholder" means:

a. a shareholder of record in a stock corporation, or a person who is the beneficial owner of shares of stock held either in a voting trust or by a nominee on behalf of a person, and

b. a member of a nonstock corporation as reflected on the records of the nonstock corporation; ~~and~~

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

3. "Under oath" includes statements the declarant affirms to be true under penalty of perjury under the laws of the United States or any state; and

4. "Subsidiary" means any entity directly or indirectly owned, in whole or in part, by the corporation of which the shareholder is a shareholder and over the affairs of which the corporation directly or indirectly exercises control, and includes but is not limited to corporations, partnerships, limited partnerships, limited liability partnerships, limited liability companies, statutory trusts and joint ventures.

B. Any shareholder, in person or by attorney or other agent, upon written demand under oath stating the purpose thereof, shall have the right during the usual hours for business to inspect for any proper purpose ~~the corporation's stock ledger, a list of its shareholders, and its other books and records,~~ and to make copies ~~of~~ and extracts therefrom from:

1. The corporation's stock ledger, a list of shareholders, and its other books and records; and

2. A subsidiary's books and records, to the extent that:

a. the corporation has actual possession and control of the records of the subsidiary, or

b. the corporation could obtain the records through the exercise of control over the subsidiary,

provided that as of the date of the making of the demand:

(1) shareholder inspection of the books and records of the subsidiary would not constitute a breach of an agreement between the corporation or the subsidiary and a person or person not affiliated with the corporation, and

(2) the subsidiary would not have the right under the law applicable to it to deny the corporation access to the books and records upon demand by the corporation.

In every instance where the shareholder is other than a records holder of stock in a stock corporation or a member of a nonstock corporation, the demand under oath shall state the person's status as a shareholder or member, be accompanied by documentary evidence of beneficial ownership of the stock or beneficial membership, and state that the documentary evidence is a true and correct copy of what it purports to be. A proper purpose shall mean a purpose reasonably related to a person's interest as a shareholder or member. In every instance where an attorney or other agent shall be the person who seeks the right to inspection, the demand under oath

shall be accompanied by a power of attorney or other writing which authorizes the attorney or other agent to so act on behalf of the shareholder. The demand under oath shall be directed to the corporation at its registered office in this state or at its principal place of business.

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

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

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

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

D. Any director, including a member of the governing body of a nonstock corporation, shall have the right to examine the corporation's stock ledger, a list of its shareholders, and its other books and records for a purpose reasonably related to his or her position as a director. The district court may summarily order the corporation to permit the director to inspect any and all books and records, the stock ledger, and the list of shareholders and to make copies or extracts therefrom. The court, in its discretion,

may prescribe any limitations or conditions with reference to the inspection, or award other or further relief as the court may deem just and proper. The burden of proof shall be upon the corporation to establish that the inspection the director seeks is for an improper purpose.

SECTION 15. AMENDATORY 18 O.S. 2001, Section 1068, is amended to read as follows:

Section 1068.

VACANCIES AND NEWLY CREATED DIRECTORSHIPS

A. 1. Unless otherwise provided in the certificate of incorporation or bylaws:

- a. Vacancies and newly created directorships resulting from any increase in the authorized number of directors elected by all of the shareholders having the right to vote as a single class may be filled by a majority of the directors then in office, although less than a quorum, or by a sole remaining director; and
- b. Whenever the holders of any class or classes of stock or series thereof are entitled to elect one (1) or more directors by the provisions of the certificate of incorporation, vacancies and newly created directorships of such class or classes or series may be filled by a majority of the directors elected by such class or classes or series thereof then in office, or by a sole remaining director so elected.

2. If at any time, by reason of death or resignation or other cause, a corporation should have no directors in office, then any officer or any shareholder or an executor, administrator, trustee or guardian of a shareholder, or other fiduciary entrusted with like responsibility for the person or estate of a shareholder, may call a special meeting of shareholders in accordance with the provisions of the certificate of incorporation or the bylaws, or may apply to the district court for a decree summarily ordering an election as provided for in Section ~~56~~ 1056 of this ~~act~~ title.

B. In the case of a corporation the directors of which are divided into classes, any directors chosen under subsection A of this section shall hold office until the next election of the class for which such directors shall have been chosen, and until their successors shall be elected and qualified.

C. If, at the time of filling any vacancy or any newly created directorship, the directors then in office shall constitute less than a majority of the whole board, as constituted immediately prior to any such increase, the district court, upon application of any shareholder or shareholders holding at least ten percent (10%) of the ~~total number of the shares~~ voting stock at the time outstanding having the right to vote for such directors, may summarily order an election to be held to fill any such vacancies or newly created

directorships, or to replace the directors chosen by the directors then in office, which election shall be governed by the provisions of Section ~~56~~ 1056 of this ~~act~~ title as far as applicable.

D. Unless otherwise provided in the certificate of incorporation or bylaws, when one or more directors shall resign from the board, effective at a future date, a majority of the directors then in office, including those who have so resigned, shall have power to fill such vacancy or vacancies, the vote thereon to take effect when such resignation or resignations shall become effective, and each director so chosen shall hold office as provided for in this section in the filling of other vacancies.

SECTION 16. AMENDATORY 18 O.S. 2001, Section 1070, is amended to read as follows:

Section 1070.

CONTESTED ELECTION OF DIRECTORS;

PROCEEDINGS TO DETERMINE VALIDITY

A. Upon application of any shareholder or director, or any officer whose title to office is contested, or any member of a corporation without capital stock, the district court may hear and determine the validity of any election, appointment, removal or resignation of any director, member of the governing body, or officer of any corporation, and the right of any person to hold, or continue to hold, such office, and, in case any such office is claimed by more than one person, may determine the person entitled thereto; and to that end make such order or decree in any such case as may be just and proper, with power to enforce the production of any books, papers and records of the corporation relating to the issue. In case it should be determined that no valid election has been held, the district court may order an election to be held in accordance with the provisions of Section ~~56~~ 1056 or ~~60~~ 1060 of this ~~act~~ title. In any such application, service of copies of the application upon the registered agent of the corporation shall be deemed to be service upon the corporation and upon the person whose title to office is contested and upon the person, if any, claiming such office; and the registered agent shall forward immediately a copy of the application to the corporation and to the person whose title to office is contested and to the person, if any, claiming such office, in a postpaid, sealed, registered letter addressed to such corporation and such person at their post office addresses last known to the registered agent or furnished to the registered agent by the applicant shareholder. The court may make such order respecting further or other notice of such application as it deems proper under the circumstances.

B. Upon application of any shareholder or any member of a corporation without capital stock, the district court may hear and determine the result of any vote of shareholders or members, as the case may be, upon matters other than the election of directors, officers or members of the governing body. Service of the application upon the registered agent of the corporation shall be deemed to be service upon the corporation, and no other party need

be joined in order for the court to adjudicate the result of the vote. The court may make such order respecting notice of the application as it deems proper under the circumstances.

SECTION 17. AMENDATORY 18 O.S. 2001, Section 1073, is amended to read as follows:

Section 1073.

#### CONSENT OF SHAREHOLDERS IN LIEU OF MEETING

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

B. With respect to a domestic corporation with a class of voting stock listed or traded on a national securities exchange or registered under Section 12(g) of the Securities Exchange Act of 1934, 15 U.S.C. Section 78a et seq., as amended, which has one thousand or more shareholders of record, unless otherwise provided for in the certificate of incorporation, any action required by the provisions of this act to be taken at any annual or special meeting of shareholders of the corporation or any action which may be taken at any annual or special meeting of shareholders, may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action taken, shall be signed by the holders of all outstanding stock entitled to vote thereon and shall be delivered to the corporation by delivery to its registered office in this state, its principal place of business, or an officer or agent of the corporation having custody of the book in which proceedings of meetings of shareholders are recorded. Delivery made to a corporation's registered office shall be by hand or by certified or registered mail, return receipt requested. The provisions of this subsection shall be effective with respect to corporate actions by written consent, and to written consent or consents, as to which the first written consent is executed or solicited after September 1, 1991.

C. Unless otherwise provided for in the certificate of incorporation, any action required by the provisions of this act to be taken at a meeting of the members of a nonstock corporation, or any action which may be taken at any meeting of the members of a

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

D. 1. A telegram, cablegram or other electronic transmission consenting to an action to be taken and transmitted by a shareholder, member or proxyholder, or by a person or persons authorized to act for a shareholder, member or proxyholder, shall be deemed to be written, signed and dated for the purposes of this section; provided that any telegram, cablegram or other electronic transmission sets forth or is delivered with information from which the corporation can determine:

- a. that the telegram, cablegram or other electronic transmission was transmitted by the shareholder, member or proxyholder or by a person or persons authorized to act for the shareholder, member or proxyholder, and
- b. the date on which the shareholder, member or proxyholder or authorized person or persons transmitted the telegram, cablegram or electronic transmission.

The date on which the telegram, cablegram or electronic transmission is transmitted shall be deemed to be the date on which the consent was signed. No consent given by telegram, cablegram or other electronic transmission shall be deemed to have been delivered until the consent is reproduced in paper form and until the paper form shall be delivered to the corporation by delivery to its registered office in this state, its principal place of business or an officer or agent of the corporation having custody of the book in which proceedings of meetings of shareholders or members are recorded. Delivery made to a corporation's registered office shall be made by hand or by certified or registered mail, return receipt requested. Notwithstanding the foregoing limitations on delivery, consents given by telegram, cablegram or other electronic transmission may be otherwise delivered to the principal place of business of the corporation or to an officer or agent of the corporation having custody of the book in which proceedings of meetings of shareholders or members are recorded if, to the extent and in the manner provided by resolution of the board of directors or governing body of the corporation.

2. Any copy, facsimile or other reliable reproduction of a consent in writing may be substituted or used in lieu of the original writing for any and all purposes for which the original writing could be used; provided that the copy, facsimile or other

reliable reproduction shall be a complete reproduction of the entire original writing.

E. Every written consent shall bear the date of signature of each shareholder or member who signs the consent and no written consent shall be effective to take the corporate action referred to therein unless, within sixty (60) days of the earliest dated consent delivered in the manner required by this section to the corporation, written consents signed by a sufficient number of holders or members to take action are delivered to the corporation by delivery to its registered office in this state, its principal place of business, or an officer or agent of the corporation having custody of the book in which proceedings of meetings of shareholders are recorded. Delivery made to a corporation's registered office shall be by hand or by certified or registered mail, return receipt requested.

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

SECTION 18. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1075.3 of Title 18, unless there is created a duplication in numbering, reads as follows:

A. Without limiting the manner by which notice otherwise may be given effectively to shareholders, any notice to shareholders given by the corporation under any provision of this act, the certificate of incorporation, or the bylaws shall be effective if given by a single written notice to shareholders who share an address if consented to by the shareholders at that address to whom such notice is given. Any such consent shall be revocable by the shareholder by written notice to the corporation.

B. Any shareholder who fails to object in writing to the corporation, within sixty (60) days of having been given written notice by the corporation of its intention to send the single notice permitted under subsection A of this section, shall be deemed to have consented to receiving such single written notice.

C. This section shall apply to a corporation organized under this act that is not authorized to issue capital stock, and when so applied, all references to shareholders shall be deemed to refer to members of such a corporation.

D. This section shall not apply to Section 1045, 1111, 1119 or 1120 of Title 18 of the Oklahoma Statutes.

SECTION 19. AMENDATORY 18 O.S. 2001, Section 1080, is amended to read as follows:

Section 1080.

#### RESTATED CERTIFICATE OF INCORPORATION

A. A corporation, whenever desired, may integrate into a single instrument all of the provisions of its certificate of incorporation which are then in effect and operative as a result of there having up to that time been filed with the Secretary of State one or more certificates or other instruments pursuant to any of the sections referred to in Section 1008 of this title, and it may at the same time also further amend its certificate of incorporation by adopting a restated certificate of incorporation.

B. If the restated certificate of incorporation merely restates and integrates but does not further amend the certificate of incorporation, as up to that time amended or supplemented by any instrument that was filed pursuant to any of the sections mentioned in Section 1008 of this title, it may be adopted by the board of directors without a vote of the shareholders, or it may be proposed by the directors and submitted by them to the shareholders for adoption, in which case the procedure and vote required by Section 1077 of this title for amendment of the certificate of incorporation shall be applicable. If the restated certificate of incorporation restates and integrates and also further amends in any respect the certificate of incorporation, as up to that time amended or supplemented, it shall be proposed by the directors and adopted by the shareholders in the manner and by the vote prescribed by Section 1077 of this title or, if the corporation has not received any payment for any of its stock, in the manner and by the vote prescribed by Section 1076 of this title.

C. A restated certificate of incorporation shall be specifically designated as such in its heading. It shall state, either in its heading or in an introductory paragraph, the corporation's present name, and, if it has been changed, the name under which it was originally incorporated, and the date of filing of its original certificate of incorporation with the Secretary of State. If it was adopted by the board of directors without a vote of the shareholders, unless it was adopted pursuant to the provisions of Section 1076 of this title, it shall state that it only restates and integrates and does not further amend the provisions of the corporation's certificate of incorporation as up to that time amended or supplemented, and that there is no discrepancy between those provisions and the provisions of the restated certificate. A restated certificate of incorporation may omit:

1. Such provisions of the original certificate of incorporation which named the incorporator or incorporators, the initial board of directors, and the original subscribers for shares; and

2. Such provisions contained in any amendment to the certificate of incorporation as were necessary to effect a change, exchange, reclassification, subdivision, combination or cancellation of stock, if such change, exchange, reclassification, subdivision, combination or cancellation has become effective.

Any such omissions shall not be deemed a further amendment.

D. A restated certificate of incorporation shall be executed, acknowledged and filed in accordance with the provisions of Section 7 1007 of this ~~act~~ title. Upon its filing with the Secretary of State, the original certificate of incorporation, as up to that time amended or supplemented, shall be superseded. From that time forward, the restated certificate of incorporation, including any further amendments or changes made thereby, shall be the certificate of incorporation of the corporation, but the original date of incorporation shall remain unchanged.

E. Any amendment or change effected in connection with the restatement and integration of the certificate of incorporation shall be subject to any other provision of the Oklahoma General Corporation Act, not inconsistent with the provisions of this section, which would apply if a separate certificate of amendment were filed to effect such amendment or change.

SECTION 20. AMENDATORY 18 O.S. 2001, 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 and declaring its advisability. 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, if any, 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, or of canceling some or all of the shares, and, if any shares of any of the constituent corporations are not to remain outstanding, to be converted solely into shares or other securities of the surviving or resulting corporation or to be canceled, the cash, property, rights, or securities of any other corporation or entity 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 or entity 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. ~~The terms of the agreement 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~~ entities 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~~ the constituent corporation are corporations of this state and the direct or indirect wholly owned subsidiary that is the other constituent entity to the merger is a corporation or limited liability company 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, subdivision, combination 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 other than the election or removal of directors 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~~

the organizational documents of the surviving entity immediately following the effective time of the merger contain provisions 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 or entity name, the registered office and agent, the initial board of directors and the initial subscribers for shares, references to members rather than shareholders or shareholders, references to interests, units or the like rather than stock or shares, references to managers, managing members or other members of the governing body rather than directors and such provisions contained in any amendment to the certificate of incorporation as were necessary to effect a change, exchange, reclassification, subdivision, combination or cancellation of stock, if such change, exchange, reclassification, subdivision, combination or cancellation has become effective; provided, however, that:

- (1) if the organizational documents of the surviving entity do not contain the following provisions, they shall be amended in the merger to contain provisions requiring that:
  - (a) any act or transaction by or involving the surviving entity, other than the election or removal of directors or managers, managing members or other members of the governing body of the surviving entity, that requires for its adoption under this act or its organizational documents the approval of the shareholders or members of the surviving entity 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 act and/or by the organizational documents of the surviving entity; provided, however, that for purposes of this subdivision, any surviving entity that is not a corporation shall include in such amendment a requirement that the approval of the shareholders of the holding company be obtained for any act or transaction by or involving the surviving entity, other than the election or removal of directors or managers, managing members or other members of the governing body of the surviving entity, which would require the approval of the shareholders of the surviving entity if

the surviving entity were a corporation subject to this act,

(b) any amendment of the organizational documents of a surviving entity that is not a corporation, which amendment would, if adopted by a corporation subject to this act, be required to be included in the certificate of incorporation of such 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 act and/or by the organizational documents of the surviving entity, and

(c) the business and affairs of a surviving entity that is not a corporation shall be managed by or under the direction of a board of directors, board of managers or other governing body consisting of individuals who are subject to the same fiduciary duties applicable to, and who are liable for breach of such duties to the same extent as, directors of a corporation subject to this act, and

(2) the organizational documents of the surviving entity may be amended in the merger to reduce the number of classes and shares of capital stock or other equity interests or units that the surviving ~~corporation~~ entity 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.

Neither division (1) of subparagraph g of paragraph 1 of this subsection ~~of this section~~ nor any provision of a surviving corporation's certificate of incorporation entity's organizational documents required by division (1) of subparagraph g of paragraph 1 of this subsection ~~of this section~~ shall be deemed or construed to require approval of the shareholders of the holding company to elect or remove directors or managers, managing members or other members of the governing body of the surviving corporation entity.

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. As used in this subsection, the term "organizational documents" means, when used in reference to a corporation, the

certificate of incorporation of the corporation and, when used in reference to a limited liability company, the articles of organization and the operating agreement of the limited liability company.

4. 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~~ shares of stock of the constituent corporation converted in the merger ~~was~~ were 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 in the merger shall be represented by the stock certificates that previously represented the shares of capital stock of the constituent corporation, and
- c. to the extent a shareholder of the constituent corporation immediately prior to the merger had standing to institute or maintain derivative litigation on behalf of the constituent corporation, nothing in this section shall be deemed to limit or extinguish such standing.

5. 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 paragraph 1 of this subparagraph subsection have been satisfied. The agreement so adopted and certified shall then be filed and become effective in accordance with Section 1007 of this title. Filing shall constitute a representation by the person who executes the agreement that the

facts stated in the certificate remain true immediately prior to the filing.

SECTION 21. AMENDATORY 18 O.S. 2001, 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, if any, 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, or of canceling some or all of the shares, and, if any shares of any of the constituent corporations are not to remain outstanding, to be converted solely into shares or other securities of the surviving or resulting corporation or to be canceled, the cash, property, rights, or securities of any other corporation or entity 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 or entity 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 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 22. AMENDATORY 18 O.S. 2001, Section 1083, is amended to read as follows:

Section 1083.

#### MERGER OF PARENT CORPORATION AND SUBSIDIARY OR SUBSIDIARIES

A. In any case in which at least ninety percent (90%) of the outstanding shares of each class of stock of a corporation or corporations, other than a corporation which has in its certificate of incorporation the provision required by division (1) of subparagraph g of paragraph 1 of subsection G of Section 1081 of this title of which class there are outstanding shares that, absent this subsection, would be entitled to vote on such merger, is owned by another corporation and one of the corporations is a corporation of this state and the other or others are corporations of this state or of any other state or states or of the District of Columbia, and the laws of the other state or states or of the District of Columbia permit a corporation of that jurisdiction to merge with a corporation of another jurisdiction, the corporation having such stock ownership may either merge the other corporation or corporations into itself and assume all of its or their obligations, or merge itself, or itself and one or more of the other corporations, into one of the other corporations by executing, acknowledging, and filing, in accordance with the provisions of Section 1007 of this title, a certificate of ownership and merger setting forth a copy of the resolution of its board of directors to merge and the date of its adoption; provided, however, that in case the parent corporation shall not own all the outstanding stock of all the subsidiary corporations which are parties to the merger, the resolution of the board of directors of the parent corporation shall state the terms and conditions of the merger, including the securities, cash, property, or rights to be issued, paid, delivered, or granted by the surviving corporation upon surrender of each share of the subsidiary corporation or corporations not owned by the parent corporation or the cancellation of some or all of the shares. Any of the terms of the resolution of the board of directors to so merge may be made dependent upon facts ascertainable outside of such resolution, provided that the manner in which such facts shall operate upon the terms of the resolution is clearly and expressly set forth in the resolution. The term "facts", as used in the preceding sentence, includes, but is not limited to, the occurrence of any event, including a determination or action by any person or body, including the corporation. If the parent corporation is not the surviving corporation, the resolution shall include provision for the pro rata issuance of stock of the surviving corporation to the holders of the stock of the parent corporation on surrender of any certificates therefor, and the certificate of ownership and merger shall state that the proposed merger has been approved by a majority of the outstanding stock of the parent corporation entitled to vote thereon at a meeting thereof duly called and held after

twenty (20) days' notice of the purpose of the meeting is mailed to each shareholder at the shareholder's address as it appears on the records of the corporation if the parent corporation is a corporation of this state or state that the proposed merger has been adopted, approved, certified, executed, and acknowledged by the parent corporation in accordance with the laws under which it is organized if the parent corporation is not a corporation of this state. If the surviving corporation exists under the laws of the District of Columbia or any state other than this state, the provisions of subsection D of Section 1082 of this title shall also apply to a merger pursuant to the provisions of this section.

B. Subject to the provisions of paragraph 1 of subsection A of Section 1006 of this title, if the surviving corporation is an Oklahoma corporation, it may change its corporate name by the inclusion of a provision to that effect in the resolution of merger adopted by the directors of the parent corporation and set forth in the certificate of ownership and merger, and upon the effective date of the merger, the name of the corporation shall be changed.

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

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

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

SECTION 23. AMENDATORY 18 O.S. 2001, Section 1084, is amended to read as follows:

Section 1084.

MERGER OR CONSOLIDATION OF DOMESTIC NONSTOCK,

NOT FOR PROFIT CORPORATIONS

A. Any two or more nonstock corporations of this state, whether or not organized for profit, may merge into a single corporation, which may be any one of the constituent corporations, or they may consolidate into a new nonstock corporation, whether or not organized for profit, formed by the consolidation, pursuant to an agreement of merger or consolidation, as the case may be, complying and approved in accordance with the provisions of this section.

B. 1. The governing body of each corporation which desires to merge or consolidate shall adopt a resolution approving an agreement of merger or consolidation. The agreement shall state:

- a. the terms and conditions of the merger or consolidation,
- b. the mode of carrying the same into effect,
- c. other provisions or facts required or permitted by ~~the Oklahoma General Corporation Act~~ this act to be stated in a certificate of incorporation for nonstock corporations as can be stated in the case of a merger or consolidation, stated in an altered form as the circumstances of the case require,
- d. the manner, if any, of converting the memberships of each of the constituent corporations into memberships of the corporation surviving or resulting from the merger or consolidation, or of canceling some or all of the memberships, and
- e. other details or provisions as are deemed desirable.

2. Any of the terms of the agreement of merger or consolidation may be made dependent upon facts ascertainable outside of 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 submitted to the members of each constituent corporation who have the right to vote for the election of the members of the governing body of their corporation, at an annual or special meeting for the purpose of acting on the agreement. Notice of the time, place, and purpose of the meeting shall be mailed to each member of each corporation who has the right to vote for the election of the members of the governing body of the corporation, at the member's address as it appears on the records of the corporation at least twenty (20) days prior to the date of the meeting. The notice shall contain a copy of the agreement or a brief summary thereof, as the governing body shall deem advisable. At the meeting, the agreement shall be considered and a vote by ballot, in person or by proxy, taken for the adoption or rejection

of the agreement. If a majority of the voting power of voting members of each corporation shall be for the adoption of the agreement, that fact shall be certified on the agreement by the officer performing the duties ordinarily performed by the secretary or assistant secretary of a corporation. The agreement shall be executed, acknowledged and filed, and shall become effective, in accordance with the provisions of Section 1007 of this title. The provisions of paragraphs 1 through 6 of subsection C of Section 1081 of this title shall apply to a merger or consolidation under this section.

D. If, under the provisions of the certificate of incorporation of any one or more of the constituent corporations, there shall be no members who have the right to vote for the election of the members of the governing body of the corporation other than the members of that body themselves, the agreement duly entered into as provided for in subsection B of this section shall be submitted to the members of the governing body of the corporation or corporations at a meeting thereof. Notice of the meeting shall be mailed to the members of the governing body in the same manner as is provided in the case of a meeting of the members of a corporation. If at the meeting two-thirds (2/3) of the total number of members of the governing body shall vote by ballot, in person, for the adoption of the agreement, that fact shall be certified on the agreement in the same manner as is provided in the case of the adoption of the agreement by the vote of the members of a corporation and thereafter the same procedure shall be followed to consummate the merger or consolidation.

E. The provisions of subsection E of Section 1081 of this title shall apply to a merger pursuant to the provisions of this section.

F. Nothing in this section shall be construed to authorize the merger of a charitable nonstock corporation into a nonstock corporation if the charitable nonstock corporation would thereby have its charitable status lost or impaired; but a nonstock corporation may be merged into a charitable nonstock corporation which shall continue as the surviving corporation.

SECTION 24. AMENDATORY 18 O.S. 2001, Section 1085, is amended to read as follows:

Section 1085.

MERGER OR CONSOLIDATION OF DOMESTIC AND FOREIGN NONSTOCK,

NOT FOR PROFIT CORPORATIONS; SERVICE OF PROCESS UPON

SURVIVING OR RESULTING CORPORATION

A. Any one or more nonstock, not for profit corporations of this state may merge or consolidate with one or more other nonstock, not for profit corporations of any other state or states of the United States or of the District of Columbia, if the laws of such other state or states or of the District of Columbia permit a corporation of such jurisdiction to merge 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 nonstock, not for profit 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 nonstock, not for profit corporations organized under the laws of any jurisdiction other than one of the United States may merge or consolidate with one or more nonstock, not for profit corporations of this state if the surviving or resulting corporation will be a corporation of this state, and if the laws under which the other corporation or corporations are formed permit a corporation of such jurisdiction to merge with a corporation of another jurisdiction.

B. 1. All the constituent corporations shall enter into an agreement of merger or consolidation. The agreement shall state:

- a. the terms and conditions of the merger or consolidation~~+~~;
- b. the mode of carrying the same into effect~~+~~;
- c. the manner, if any, of converting the memberships of each of the constituent corporations into members of the corporation surviving or resulting from such merger or consolidation~~+~~; or of canceling some or all of the memberships,
- d. such other details and provisions as shall be deemed desirable~~+~~; and
- e. such other provisions or facts as shall then be required to be stated in a 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.

2. Any of the terms of the agreement of merger or consolidation may be made dependent upon facts ascertainable outside of such agreement, provided that the manner in which such facts shall operate upon the terms of the agreement is clearly and expressly set forth in the agreement of merger or consolidation.

C. The agreement shall be adopted, approved, certified, 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 ~~84~~ 1084 of this ~~act~~ 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 ~~84~~ 1084 of this ~~act~~ title with respect to the merger of nonstock, not for profit corporations of this state. Insofar as they may be applicable, the provisions of

paragraphs 1 through 9 of subsection C of Section ~~82~~ 1082 of this ~~act~~ title shall apply to a merger under this section.

D. If the corporation surviving or resulting from the merger or consolidation is to be governed by the laws of 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 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 such process shall be mailed by the Secretary of State. In the event of such service upon the Secretary of State in accordance with the provisions of this subsection, the Secretary of State shall immediately notify such surviving or resulting corporation thereof by letter, certified mail, return receipt requested, directed to such corporation at its address so specified, unless such surviving or resulting corporation shall have designated in writing to the Secretary of State a different address for such purpose, in which case it shall be mailed to the last address so designated. Such letter shall enclose a copy of the process and any other papers served upon the Secretary of State. 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 made pursuant to the provisions of this subsection, and to pay the Secretary of State the fee prescribed by paragraph 7 of Section ~~142~~ 1142 of this ~~act~~ 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 defendant, the title, docket number and nature of the proceeding in which process has been served upon him, the fact that service has been effected pursuant to the provisions of this subsection, the return date thereof, and the date when the service was made. The Secretary of State shall not be required to retain such information for a period longer than five (5) years from his receipt of service of process.

E. The provisions of subsection E of Section ~~81~~ 1081 of this ~~act~~ title shall apply to a merger pursuant to the provisions of this section if the corporation surviving the merger is a corporation of this state.

SECTION 25. AMENDATORY 18 O.S. 2001, 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~~ this 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, if any, 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, or of canceling some or all of the shares or interests, and if any shares of any such stock corporation or membership interests of any such nonstock corporation are not to remain outstanding, 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, or to be canceled, 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 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 26. AMENDATORY 18 O.S. 2001, 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. In addition, any one or more business entities formed 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 the laws under which the business entity or entities are formed permit a business entity of such jurisdiction to merge or consolidate with a corporation of another jurisdiction. 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, if any, 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, or of canceling some or all of the shares or interests, and if any shares of any corporation or any ownership interests of any business entity are not to remain outstanding, to be converted solely into shares, ownership interests, or other securities of the entity surviving or resulting from the merger or consolidation or to be canceled, 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 jurisdiction under which they are formed, as the case may be; provided that no holder of securities or an interest in a constituent entity who has not voted for or consented to the merger or consolidation shall be required to accept an interest in the surviving or resulting business entity if acceptance would expose the holder to personal liability for the debts of the surviving business entity. 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 jurisdiction of formation 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;

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

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 27. AMENDATORY 18 O.S. 2001, 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 outstanding voting power ~~the votes attributable to stock, but not the outstanding voting stock owned by the interested shareholder,~~ 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~~ adopted an amendment to its bylaws ~~within ninety (90) days of the effective date of this section~~ by November 30, 1991, 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, with the approval 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 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%) a~~ twenty-percent beneficial interest 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, partnership, unincorporated association, or other entity 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,

- (4) pursuant to an exchange offer by the corporation to purchase stock made on the same terms to all holders of the stock, or
  - (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~~ 9 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. Every reference to a percentage of voting stock refers to the percentage of the votes of the voting stock; 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 28. AMENDATORY 18 O.S. 2001, Section 1090.5, is amended to read as follows:

Section 1090.5

CONVERSION OF DOMESTIC CORPORATION  
TO A DOMESTIC BUSINESS ENTITY

A. A corporation of this state may, upon the authorization of such conversion in accordance with this section, convert to a business entity. As used in this section, the term "business entity" means a domestic partnership, whether general or limited, limited liability company, business trust, common law trust, or other unincorporated association.

B. The board of directors of the corporation which desires to convert under this section shall adopt a resolution approving such conversion, specifying the type of business entity into which the corporation shall be converted and recommending the approval of the conversion by the shareholders of the corporation. The resolution shall be submitted to the shareholders of the corporation at an annual or special meeting. Due notice of the time, and purpose of the meeting shall be mailed to each holder of shares, whether voting or nonvoting, of the corporation at the address of the shareholder as it appears on the records of the corporation, at least twenty (20) days prior to the date of the meeting. At the meeting, the resolution shall be considered and a vote taken for its adoption or rejection. ~~If~~ The corporation adopts the conversion if all outstanding shares of stock of the corporation, whether voting or nonvoting, ~~shall be~~ are voted for the ~~adoption of the~~ resolution.

C. If the governing act of the domestic business entity into which the corporation is converting does not provide for the filing of a conversion notice with the Secretary of State, the corporation shall file with the Secretary of State a certificate of conversion executed in accordance with Section 1007 of this title which certifies:

1. The name of the corporation, and if it has been changed, the name under which it was originally incorporated;

2. The date of filing of its original certificate of incorporation with the Secretary of State;

3. The name of the business entity into which the corporation shall be converted;

4. That the conversion has been approved in accordance with the provisions of this section; and

5. If the business entity into which the corporation is converting was required to make a filing with the Secretary of State as a condition of its information, the type and date of such filing.

~~C.~~ D. Upon the filing of a ~~certificate of conversion in accordance with notice with the Secretary of State, whether under subsection B C of this section or under the governing act of the domestic business entity into which the corporation is converting,~~ the filing of any formation document required by the governing act of the domestic entity into which the corporation is converting, and payment to the Secretary of State of all prescribed fees ~~prescribed under this title,~~ the Secretary of State shall certify that the corporation has filed all documents and paid all required fees ~~required by this title,~~ and thereupon the corporation shall cease to exist as a corporation of this state at the time the certificate of conversion becomes effective in accordance with Section 1007 of this title. The certificate of the Secretary of State shall be prima facie evidence of the conversion by the corporation.

~~D.~~ E. The conversion of a corporation pursuant to a certificate of conversion under this section shall not be deemed to affect any obligations or liabilities of the corporation incurred prior to such conversion or the personal liability of any person incurred prior to the conversion.

E. F. After the time the certificate of conversion becomes effective the corporation shall continue to exist as a business entity of this state, and the laws of this state shall apply to the entity to the same extent as prior to the time.

F. G. Unless otherwise provided in a resolution of conversion adopted in accordance with this section, the converting corporation shall not be required to wind up its affairs or pay its liabilities and distribute its assets, and the conversion shall not constitute a dissolution of such corporation and shall constitute a continuation of the existence of the converting corporation in the form of the applicable business entity of this state.

SECTION 29. AMENDATORY 18 O.S. 2001, Section 1091, is amended to read as follows:

Section 1091.

#### APPRAISAL RIGHTS

A. Any shareholder of a corporation of this state who holds shares of stock on the date of the making of a demand pursuant to the provisions of subsection D of this section with respect to the shares, who continuously holds the shares through the effective date of the merger or consolidation, who has otherwise complied with the provisions of subsection D of this section and who has neither voted in favor of the merger or consolidation nor consented thereto in writing pursuant to the provisions of Section 1073 of this title shall be entitled to an appraisal by the district court of the fair value of the shares of stock under the circumstances described in subsections B and C of this section. As used in this section, the word "shareholder" means a holder of record of stock in a stock corporation and also a member of record of a nonstock corporation; the words "stock" and "share" mean and include what is ordinarily meant by those words and also membership or membership interest of a member of a nonstock corporation; and "depository receipt" means an instrument issued by a depository representing an interest in one or more shares, or fractions thereof, solely of stock of a corporation, which stock is deposited with the depository. The provisions of this subsection shall be effective only with respect to mergers or consolidations consummated pursuant to an agreement of merger or consolidation entered into after November 1, 1988.

B. 1. Except as otherwise provided for in this subsection, appraisal rights shall be available for the shares of any class or series of stock of a constituent corporation in a merger or consolidation, or of the acquired corporation in a share acquisition, to be effected pursuant to the provisions of Section 1081, other than a merger effected pursuant to subsection G of Section 1081, and ~~Sections~~ Section 1082, 1086, 1087, 1090.1 or 1090.2 of this title.

2. a. No appraisal rights under this section shall be available for the shares of any class or series of stock which stock, or depository receipts in respect thereof, at the record date fixed to determine the shareholders entitled to receive notice of and to vote at the meeting of shareholders to act upon the agreement of merger or consolidation, were either:

- (1) listed on a national securities exchange or designated as a national market system security on an interdealer quotation system by the National Association of Securities Dealers, Inc.; or
- (2) held of record by more than two thousand holders.

No appraisal rights shall be available for any shares of stock of the constituent corporation surviving a

merger if the merger did not require for its approval the vote of the shareholders of the surviving corporation as provided in subsection G of Section 1081 of this title.

- b. In addition, no appraisal rights shall be available for any shares of stock, or depository receipts in respect thereof, of the constituent corporation surviving a merger if the merger did not require for its approval the vote of the shareholders of the surviving corporation as provided for in subsection F of Section 1081 of this title.

3. Notwithstanding the provisions of paragraph 2 of this subsection, appraisal rights provided for in this section shall be available for the shares of any class or series of stock of a constituent corporation if the holders thereof are required by the terms of an agreement of merger or consolidation pursuant to the provisions of ~~Sections~~ Section 1081, 1082, 1086, 1087, 1090.1 or 1090.2 of this title to accept for the stock anything except:

- a. shares of stock of the corporation surviving or resulting from the merger or consolidation or depository receipts thereof, or
- b. shares of stock of any other corporation, or depository receipts in respect thereof, which shares of stock or depository receipts at the effective date of the merger or consolidation will be either listed on a national securities exchange or designated as a national market system security on an interdealer quotation system by the National Association of Securities Dealers, Inc. or held of record by more than two thousand holders, or
- c. cash in lieu of fractional shares or fractional depository receipts described in subparagraphs a and b of this paragraph, or
- d. any combination of the shares of stock, depository receipts, and cash in lieu of the fractional shares or depository receipts described in subparagraphs a, b, and c of this paragraph.

4. In the event all of the stock of a subsidiary Oklahoma corporation party to a merger effected pursuant to the provisions of Section 1083 of this title is not owned by the parent corporation immediately prior to the merger, appraisal rights shall be available for the shares of the subsidiary Oklahoma corporation.

C. Any corporation may provide in its certificate of incorporation that appraisal rights under this section shall be available for the shares of any class or series of its stock as a result of an amendment to its certificate of incorporation, any merger or consolidation in which the corporation is a constituent corporation or the sale of all or substantially all of the assets of the corporation. If the certificate of incorporation contains such

a provision, the procedures of this section, including those set forth in subsections D and E of this section, shall apply as nearly as is practicable.

D. Appraisal rights shall be perfected as follows:

1. If a proposed merger or consolidation for which appraisal rights are provided under this section is to be submitted for approval at a meeting of shareholders, the corporation, not less than twenty (20) days prior to the meeting, shall notify each of its shareholders entitled to appraisal rights that appraisal rights are available for any or all of the shares of the constituent corporations, and shall include in the notice a copy of this section. Each shareholder electing to demand the appraisal of the shares of the shareholder shall deliver to the corporation, before the taking of the vote on the merger or consolidation, a written demand for appraisal of the shares of the shareholder. The demand will be sufficient if it reasonably informs the corporation of the identity of the shareholder and that the shareholder intends thereby to demand the appraisal of the shares of the shareholder. A proxy or vote against the merger or consolidation shall not constitute such a demand. A shareholder electing to take such action must do so by a separate written demand as herein provided. Within ten (10) days after the effective date of the merger or consolidation, the surviving or resulting corporation shall notify each shareholder of each constituent corporation who has complied with the provisions of this subsection and has not voted in favor of or consented to the merger or consolidation as of the date that the merger or consolidation has become effective; or

2. ~~If the merger or consolidation is approved pursuant to the provisions of Section 1073 or 1083 of this title, each constituent corporation, either before the effective date of the merger or consolidation or within ten (10) days thereafter, shall notify each of the holders of any class or series of stock of such constituent corporation who are entitled to appraisal rights of the approval of the merger or consolidation and that appraisal rights are available for any or all of the shares of the class or series of stock of the constituent corporation, and shall include in such notice a copy of this section; provided, if the notice is given on or after the effective date of the merger or consolidation, the notice shall be given by the surviving or resulting corporation to all the holders of any class or series of stock of a constituent corporation that are entitled to appraisal rights either a constituent corporation before the effective date of the merger or consolidation or the surviving or resulting corporation within ten (10) days thereafter shall notify each of the holders of any class or series of stock of the constituent corporation who are entitled to appraisal rights of the approval of the merger or consolidation and that appraisal rights are available for any or all shares of such class or series of stock of the constituent corporation, and shall include in the notice a copy of this section.~~ The notice may, and, if given on or after the effective date of the merger or consolidation, shall, also notify the shareholders of the effective date of the merger or consolidation. Any shareholder entitled to appraisal rights may, within twenty (20) days after the date of mailing of the notice, demand in writing from the surviving or resulting corporation the

appraisal of the holder's shares. The demand will be sufficient if it reasonably informs the corporation of the identity of the shareholder and that the shareholder intends to demand the appraisal of the ~~the~~ holder's shares. If the notice does not notify shareholders of the effective date of the merger or consolidation either:

- a. each constituent corporation shall send a second notice before the effective date of the merger or consolidation notifying each of the holders of any class or series of stock of the constituent corporation that are entitled to appraisal rights of the effective date of the merger or consolidation, or
- b. the surviving or resulting corporation shall send a second notice to all holders on or within ten (10) days after the effective date of the merger or consolidation; provided, however, that if the second notice is sent more than twenty (20) days following the mailing of the first notice, the second notice need only be sent to each shareholder who is entitled to appraisal rights and who has demanded appraisal of the holder's shares in accordance with this subsection. An affidavit of the secretary or assistant secretary or of the transfer agent of the corporation that is required to give either notice that the notice has been given shall, in the absence of fraud, be prima facie evidence of the facts stated therein. For purposes of determining the shareholders entitled to receive either notice, each constituent corporation may fix, in advance, a record date that shall be not more than ten (10) days prior to the date the notice is given; provided, if the notice is given on or after the effective date of the merger or consolidation, the record date shall be the effective date. If no record date is fixed and the notice is given prior to the effective date, the record date shall be the close of business on the day next preceding the day on which the notice is given.

E. Within one hundred twenty (120) days after the effective date of the merger or consolidation, the surviving or resulting corporation or any shareholder who has complied with the provisions of subsections A and D of this section and who is otherwise entitled to appraisal rights, may file a petition in district court demanding a determination of the value of the stock of all such shareholders; provided, however, at any time within sixty (60) days after the effective date of the merger or consolidation, any shareholder shall have the right to withdraw the demand of the shareholder for appraisal and to accept the terms offered upon the merger or consolidation. Within one hundred twenty (120) days after the effective date of the merger or consolidation, any shareholder who has complied with the requirements of subsections A and D of this section, upon written request, shall be entitled to receive from the corporation surviving the merger or resulting from the consolidation a statement setting forth the aggregate number of shares not voted in favor of the merger or consolidation and with respect to which

demands for appraisal have been received and the aggregate number of holders of the shares. The written statement shall be mailed to the shareholder within ten (10) days after the shareholder's written request for a statement is received by the surviving or resulting corporation or within ten (10) days after expiration of the period for delivery of demands for appraisal pursuant to the provisions of subsection D of this section, whichever is later.

F. Upon the filing of any such petition by a shareholder, service of a copy thereof shall be made upon the surviving or resulting corporation, which, within twenty (20) days after service, shall file, in the office of the court clerk of the district court in which the petition was filed, a duly verified list containing the names and addresses of all shareholders who have demanded payment for their shares and with whom agreements regarding the value of their shares have not been reached by the surviving or resulting corporation. If the petition shall be filed by the surviving or resulting corporation, the petition shall be accompanied by such duly verified list. The court clerk, if so ordered by the court, shall give notice of the time and place fixed for the hearing on the petition by registered or certified mail to the surviving or resulting corporation and to the shareholders shown on the list at the addresses therein stated. Notice shall also be given by one or more publications at least one (1) week before the day of the hearing, in a newspaper of general circulation published in the City of Oklahoma City, Oklahoma, or other publication as the court deems advisable. The forms of the notices by mail and by publication shall be approved by the court, and the costs thereof shall be borne by the surviving or resulting corporation.

G. At the hearing on the petition, the court shall determine the shareholders who have complied with the provisions of this section and who have become entitled to appraisal rights. The court may require the shareholders who have demanded an appraisal of their shares and who hold stock represented by certificates to submit their certificates of stock to the court clerk for notation thereon of the pendency of the appraisal proceedings; and if any shareholder fails to comply with this direction, the court may dismiss the proceedings as to that shareholder.

H. After determining the shareholders entitled to an appraisal, the court shall appraise the shares, determining their fair value exclusive of any element of value arising from the accomplishment or expectation of the merger or consolidation, together with a fair rate of interest, if any, to be paid upon the amount determined to be the fair value. In determining the fair value, the court shall take into account all relevant factors. In determining the fair rate of interest, the court may consider all relevant factors, including the rate of interest which the surviving or resulting corporation would have to pay to borrow money during the pendency of the proceeding. Upon application by the surviving or resulting corporation or by any shareholder entitled to participate in the appraisal proceeding, the court may, in its discretion, permit discovery or other pretrial proceedings and may proceed to trial upon the appraisal prior to the final determination of the shareholder entitled to an appraisal. Any shareholder whose name appears on the list filed by the surviving or resulting corporation

pursuant to the provisions of subsection F of this section and who has submitted the certificates of stock of the shareholder to the court clerk, if required, may participate fully in all proceedings until it is finally determined that the shareholder is not entitled to appraisal rights pursuant to the provisions of this section.

I. The court shall direct the payment of the fair value of the shares, together with interest, if any, by the surviving or resulting corporation to the shareholders entitled thereto. Interest may be simple or compound, as the court may direct. Payment shall be made to each shareholder, in the case of holders of uncertificated stock immediately, and in the case of holders of shares represented by certificates upon the surrender to the corporation of the certificates representing the stock. The court's decree may be enforced as other decrees in the district court may be enforced, whether the surviving or resulting corporation be a corporation of this state or of any other state.

J. The costs of the proceeding may be determined by the court and taxed upon the parties as the court deems equitable in the circumstances. Upon application of a shareholder, the court may order all or a portion of the expenses incurred by any shareholder in connection with the appraisal proceeding, including, without limitation, reasonable attorney's fees and the fees and expenses of experts, to be charged pro rata against the value of all of the shares entitled to an appraisal.

K. From and after the effective date of the merger or consolidation, no shareholder who has demanded appraisal rights as provided for in subsection D of this section shall be entitled to vote the stock for any purpose or to receive payment of dividends or other distributions on the stock, except dividends or other distributions payable to shareholders of record at a date which is prior to the effective date of the merger or consolidation; provided, however, that if no petition for an appraisal shall be filed within the time provided for in subsection E of this section, or if the shareholder shall deliver to the surviving or resulting corporation a written withdrawal of the shareholder's demand for an appraisal and an acceptance of the merger or consolidation, either within sixty (60) days after the effective date of the merger or consolidation as provided for in subsection E of this section or thereafter with the written approval of the corporation, then the right of the shareholder to an appraisal shall cease; provided further, no appraisal proceeding in the district court shall be dismissed as to any shareholder without the approval of the court, and approval may be conditioned upon terms as the court deems just.

L. The shares of the surviving or resulting corporation into which the shares of any objecting shareholders would have been converted had they assented to the merger or consolidation shall have the status of authorized and unissued shares of the surviving or resulting corporation.

SECTION 30. AMENDATORY 18 O.S. 2001, Section 1119, is amended to read as follows:

Section 1119.

## REVOCATION OF VOLUNTARY DISSOLUTION

A. At any time prior to the expiration of three (3) years following the dissolution of a corporation pursuant to the provisions of Section ~~96~~ 1096 of this ~~act~~ title, or, at any time prior to the expiration of such longer period as the district court may have directed pursuant to the provisions of Section ~~99~~ 1099 of this ~~act~~ title, a corporation may revoke the dissolution up to that time effected by it in the following manner:

1. For purposes of this section, "shareholders" means the shareholders of record on the date the dissolution becomes effective;

2. The board of directors shall adopt a resolution recommending that the dissolution be revoked and directing that the question of the revocation be submitted to a vote at a special meeting of shareholders-;

~~2.~~ 3. Notice of the special meeting of shareholders shall be given in accordance with the provisions of Section ~~67~~ 1067 of this ~~act~~ title to each ~~shareholder whose shares were entitled to vote upon a proposed dissolution before the corporation was dissolved.~~ of the shareholders; and

~~3.~~ 4. At the meeting a vote of the shareholders shall be taken on a resolution to revoke the dissolution. If a majority of the stock of the corporation which was outstanding and entitled to vote upon a dissolution at the time of its dissolution shall be voted for the resolution, a certificate of revocation of dissolution shall be executed and acknowledged in accordance with the provisions of Section ~~7~~ 1007 of this ~~act~~ title which shall state:

- a. the name of the corporation;
- b. the names and respective addresses of its officers;
- c. the names and respective addresses of its directors;  
and
- d. that a majority of the stock of the corporation which was outstanding and entitled to vote upon a dissolution at the time of its dissolution have voted in favor of a resolution to revoke the dissolution; or, if it be the fact, that, in lieu of a meeting and vote of shareholders, the shareholders have given their written consent to the revocation in accordance with the provisions of Section ~~73~~ 1073 of this ~~act~~ title.

B. Upon the filing in the Office of the Secretary of State of the certificate of revocation of dissolution, the Secretary of State, upon being satisfied that the requirements of this section have been complied with, shall issue his certificate that the dissolution has been revoked. Upon the issuance of such certificate by the Secretary of State, the revocation of the dissolution shall

become effective and the corporation may again carry on its business.

C. Upon the issuance of the certificate by the Secretary of State to which subsection B of this section refers, the provisions of Section 1056 of this title shall govern, and the period of time the corporation was in dissolution shall be included within the calculation of the thirty-day and thirteen-month periods to which subsection C of Section 1056 of this title refers. An election of directors, however, may be held at the special meeting of shareholders to which subsection A of this section refers, and in that event, that meeting of shareholders shall be deemed an annual meeting of shareholders for purposes of subsection C of Section 1056 of this title.

D. If, after three (3) years from the date upon which the dissolution became effective, the name of the corporation is unavailable upon the records of the Secretary of State, then, in such case, the corporation shall not be reinstated under the same name which it bore when its dissolution became effective, but shall adopt and be reinstated under some other name, and in such case the certificate to be filed pursuant to the provisions of this section shall set forth the name borne by the corporation at the time its dissolution became effective and the new name under which the corporation is to be reinstated.

~~D.~~ E. Nothing in this section shall be construed to affect the jurisdiction or power of the district court pursuant to the provisions of Section ~~100~~ 1100 or ~~101~~ 1101 of this ~~act~~ title.

SECTION 31. AMENDATORY 18 O.S. 2001, Section 1120, is amended to read as follows:

Section 1120.

#### RENEWAL, REVIVAL, EXTENSION AND RESTORATION

##### OF CERTIFICATE OF INCORPORATION

A. As used in this section, the term certificate of incorporation includes the charter of a corporation organized pursuant to the provisions of any law of this state.

B. Any corporation, at any time before the expiration of the time limited for its existence and any corporation whose certificate of incorporation has become forfeited by law for nonpayment of taxes and any corporation whose certificate of incorporation has expired by reason of failure to renew it or whose certificate of incorporation has been renewed, but, through failure to comply strictly with the provisions of the Oklahoma General Corporation Act, the validity of whose renewal has been brought into question, may at any time procure an extension, restoration, renewal or revival of its certificate of incorporation, together with all the rights, franchises, privileges and immunities and subject to all of its duties, debts and liabilities which had been secured or imposed by its original certificate of incorporation and all amendments thereto.

C. The extension, restoration, renewal or revival of the certificate of incorporation may be procured by executing, acknowledging and filing a certificate in accordance with the provisions of Section 7 1007 of this ~~act~~ title.

D. The certificate required by the provisions of subsection C of this section shall state:

1. The name of the corporation, which shall be the existing name of the corporation or the name it bore when its certificate of incorporation expired, except as provided for in subsection F of this section;

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

3. Whether or not the renewal, restoration or revival is to be perpetual and if not perpetual the time for which the renewal, restoration or revival is to continue and, in case of renewal before the expiration of the time limited for its existence, the date when the renewal is to commence, which shall be prior to the date of the expiration of the old certificate of incorporation which it is desired to renew;

4. That the corporation desiring to be renewed or revived and so renewing or reviving its certificate of incorporation was organized pursuant to the laws of this state;

5. The date when the certificate of incorporation would expire, if such is the case, or such other facts as may show that the certificate of incorporation has become forfeited or that the validity of any renewal has been brought into question; and

6. That the certificate for renewal or revival is filed by authority of those who were directors or members of the governing body of the corporation at the time its certificate of incorporation expired or who were elected directors or members of the governing body of the corporation as provided for in subsection H of this section.

E. Upon the filing of the certificate in accordance with the provisions of Section 7 1007 of this ~~act~~ title, the corporation shall be renewed and revived with the same force and effect as if its certificate of incorporation had not become forfeited, or had not expired by limitation. Such reinstatement shall validate all contracts, acts, matters and things made, done and performed within the scope of its certificate of incorporation by the corporation, its officers and agents during the time when its certificate of incorporation was forfeited or after its expiration by limitation, with the same force and effect and to all intents and purposes as if the certificate of incorporation had at all times remained in full force and effect. All real and personal property, rights and credits, which belonged to the corporation at the time its certificate of incorporation became forfeited, or expired by limitation and which were not disposed of prior to the time of its

revival or renewal shall be vested in the corporation after the renewal or revival, as fully and amply as they were held by the corporation at and before the time its certificate of incorporation became forfeited, or expired by limitation, and the corporation after its renewal and revival shall be as exclusively liable for all contracts, acts, matters and things made, done or performed in its name and on its behalf by its officers and agents prior to its reinstatement, as if its certificate of incorporation had at all times remained in full force and effect.

F. If, after three (3) years from the date upon which the certificate of incorporation became forfeited for nonpayment of taxes, or expired by limitation, the name of the corporation is unavailable upon the records of the Secretary of State, then in such case the corporation to be renewed or revived shall not be renewed under the same name which it bore when its certificate of incorporation became forfeited, or expired but shall adopt or be renewed under some other name and in such case the certificate to be filed under the provisions of this section shall set forth the name borne by the corporation at the time its certificate of incorporation became forfeited, or expired and the new name under which the corporation is to be renewed or revived.

G. Any corporation that renews or revives its certificate of incorporation pursuant to the provisions of this section shall pay to this state the amounts provided in Sections 1201 through 1214 of Title 68 of the Oklahoma Statutes. No payment made pursuant to this subsection shall reduce the amount of franchise tax due pursuant to the provisions of Sections 1201 through 1214 of Title 68 of the Oklahoma Statutes for the year in which the renewal or revival is effected.

H. If a sufficient number of the last acting officers of any corporation desiring to renew or revive its certificate of incorporation are not available by reason of death, unknown address or refusal or neglect to act, the directors of the corporation or those remaining on the board, even if only one, may elect successors to such officers. In any case where there shall be no directors of the corporation available to renew or revive the certificate of incorporation of the corporation, the shareholders may elect a full board of directors, as provided by the bylaws of the corporation, and the board shall then elect such officers as are provided by law, by the certificate of incorporation or by the bylaws to carry on the business and affairs of the corporation. A special meeting of the shareholders for the purposes of electing directors may be called by any officer, director or shareholder upon notice given in accordance with the provisions of Section ~~67~~ 1067 of this ~~act~~ title.

I. After a renewal or revival of the certificate of incorporation of the corporation shall have been effected, ~~except where a special meeting of shareholders has been called in accordance with the provisions of subsection H of this section, the officers who signed the certificate of renewal or revival shall, jointly, immediately call a special meeting of the shareholders of the corporation upon notice given in accordance with the provisions of Section 67 of this act, and at the special meeting the shareholders shall elect a full board of directors, which board~~

shall then elect such officers as are provided by law, by the certificate of incorporation or the bylaws to carry on the business and affairs of the corporation the provisions of subsection C of Section 1056 of this title shall govern and the period of time the certificate of incorporation of the corporation was forfeited or expired shall be included within the calculation of the thirty-day and thirteen-month periods to which subsection C of Section 1056 of this title refers. A special meeting of shareholders held in accordance with subsection H of this section shall be deemed an annual meeting of shareholders for purposes of subsection C of Section 1056 of this title.

J. Whenever it shall be desired to renew or revive the certificate of incorporation of any corporation organized pursuant to the provisions of the Oklahoma General Corporation Act not for profit and having no capital stock, the governing body shall perform all the acts necessary for the renewal or revival of the charter of the corporation which are performed by the board of directors in the case of a corporation having capital stock. The members of any corporation not for profit and having no capital stock who are entitled to vote for the election of members of its governing body, shall perform all the acts necessary for the renewal or revival of the certificate of incorporation of the corporation which are performed by the shareholders in the case of a corporation having capital stock. In all other respects, the procedure for the renewal or revival of the certificate of incorporation of a corporation not for profit or having no capital stock shall conform, as nearly as may be applicable, to the procedure prescribed in this section for the renewal or revival of the certificate of incorporation of a corporation having capital stock.

SECTION 32. AMENDATORY 18 O.S. 2001, Section 1131, is amended to read as follows:

Section 1131.

ADDITIONAL REQUIREMENTS IN CASE OF CHANGE OF NAME, MAILING

ADDRESS, AUTHORIZED CAPITAL OR BUSINESS

PURPOSE, OR MERGER, OR CONSOLIDATION OR CONVERSION

A. Every foreign corporation admitted to do business in this state which shall change its corporate name, the mailing address of its principal office, or its authorized capital, or shall enlarge, limit or otherwise change the business which it proposes to do in this state, within thirty (30) days after the time the change becomes effective, shall file with the Secretary of State 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:

1. The name of the foreign corporation as it appears on the records of the Secretary of State of this state;
2. The jurisdiction of its incorporation;

3. The date it was authorized to do business in this state;

4. If the name of the foreign corporation has been changed, a statement of the name relinquished, a statement of the new name and a statement that the change of name has been effected pursuant to the laws of the jurisdiction of its incorporation and the date the change was effected;

5. If the mailing address of its principal office has been changed, a statement of the mailing address relinquished and a statement of the new mailing address;

6. If the authorized capital of the corporation has been changed, a restatement of the corporate article which states its amended capitalization, a statement that the change has been effected pursuant to the laws of the jurisdiction of its incorporation and the date the change was effected;

7. If the business it proposes to do in this state is to be enlarged, limited or otherwise changed, a statement reflecting such change and a statement that it is authorized to do such business in the jurisdiction of its incorporation; and

8. If the name and/or address of the additional agent has changed, a statement of the new name and address.

B. Whenever a foreign corporation authorized to transact business in this state shall ~~be the survivor of a merger permitted by the laws of the state or country in which it is incorporated~~ merge with, consolidate into or convert to another corporation or business entity, within thirty (30) days after the merger, consolidation or conversion becomes effective, it shall file a certificate, issued by the proper officer of the state or country of its incorporation, attesting to the occurrence of such the event. If the merger, consolidation or conversion has changed the corporate name, mailing address, or authorized capital of such the foreign corporation or has enlarged, limited or otherwise changed the business it proposes to do in this state, it shall also comply with the provisions of subsection A of this section.

C. Whenever a foreign corporation authorized to transact business in this state ceases to ~~exist~~ do business in this state because of a ~~statutory merger or,~~ consolidation with a foreign corporation not qualified to transact business in this state or conversion, it shall comply with the provisions of Section 1135 of this title.

D. The Secretary of State shall be paid the fee prescribed in Section 1142 of this title for filing and indexing each statement or certificate required by the provisions of subsection A or B of this section.

SECTION 33. AMENDATORY 18 O.S. 2001, Section 2004, is amended to read as follows:

Section 2004. A. One or more persons may form a limited liability company upon the filing of executed articles of organization with the Office of the Secretary of State.

B. 1. ~~When the Office of the Secretary of State files the articles of organization become effective,~~ the proposed organization becomes a limited liability company under the name and subject to the purposes, conditions, and provisions stated in the articles. A limited liability company formed under this act is a separate legal entity, the existence of which as a separate legal entity continues until cancellation of the limited liability company's articles of organization.

2. Filing of the articles by the Office of the Secretary of State is conclusive evidence of the formation of the limited liability company.

SECTION 34. AMENDATORY 18 O.S. 2001, 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, wherever located, and the name and street address of its resident agent which shall be identical to its registered office in this state.

B. If the limited liability company is to establish two or more series of members, managers or membership interests having separate rights, powers or duties as provided under Section 50 of this act and the debts, liabilities and obligations incurred, contracted for or otherwise existing with respect to a particular series are to be enforceable against the assets of the series only, the articles of organization shall set forth a notice of the limitation on liabilities of the series.

C. The articles of organization may set forth any other matters the members determine to include. It is not necessary to set out in the articles of organization any of the powers enumerated in this act.

SECTION 35. AMENDATORY 18 O.S. 2001, Section 2006, is amended to read as follows:

Section 2006. A. Articles required by this act to be filed with the Office of the Secretary of State shall be executed in the following manner:

1. Articles of organization must be signed by at least one person who need not be a member of the limited liability company; and

2. Articles of amendment, merger, consolidation, conversion or dissolution must be signed by a manager.

B. Any person may sign any articles by an attorney in fact. ~~Powers of attorney relating to the signing of articles by an attorney in fact need not be sworn to, verified or acknowledged, and need not be filed with the Office of the Secretary of State~~ A person who executes articles as an attorney-in-fact, agent or fiduciary is not required to exhibit evidence of his or her authority as a prerequisite to filing.

C. The execution of any articles under this act constitutes an affirmation under the penalties of perjury that the facts stated therein are true.

D. ~~Any signature on any instrument authorized to be filed with the Secretary of State under this act may be a facsimile~~ Any signature on articles or any other instrument authorized by this act may be a facsimile signature, a conformed signature or an electronically transmitted signature.

SECTION 36. AMENDATORY 18 O.S. 2001, Section 2007, is amended to read as follows:

Section 2007. A. ~~Two~~ One signed copy of the articles of organization or any other articles of amendment or dissolution or of any decree of judicial amendment or dissolution authorized by this act shall be delivered to the Secretary of State. ~~A person who executes articles as an agent or fiduciary need not exhibit evidence of his authority as a prerequisite to filing.~~ Unless the Secretary of State finds that any articles do not conform to law, upon receipt of all filing and other fees required by law, he or she shall:

1. Endorse on each copy the word "filed" and the day, month and year, and the time, if applicable, of the filing thereof;
2. File one copy in his or her office; and
3. Return the other copy to the person who filed it or his or her representative.

B. ~~Upon the filing of articles of amendment or a decree of judicial amendment in the Office of the Secretary of State, the articles of organization shall be amended as set forth therein and upon the effective date of articles of dissolution or a decree of judicial dissolution, the articles of organization are cancelled~~ Unless a later effective date or time, which shall be a specified date or time not later than a time on the nineteenth day after the filing, is provided in the articles, articles of organization are effective, and the limited liability company is formed, at the time of the filing of the articles of organization with the Secretary of State.

C. Unless a later effective date or time, which shall be a specified date or time not later than a time on the nineteenth day after the filing, is provided in the articles, articles of

amendment, merger, consolidation, conversion or dissolution are effective at the time of their filing with the Secretary of State.

SECTION 37. AMENDATORY 18 O.S. 2001, Section 2010, is amended to read as follows:

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

1. A 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 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 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 registered office for a limited liability company under this subsection is effective when the Office of the Secretary of State files the statement, unless a later effective date or time, which shall be a specified date or time not later than a time on the nineteenth day after the filing, is provided in 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 the agent or on 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~~ The change of address of the resident agent or principal office is effective when the Office of the Secretary of State files the statement, unless a later effective date or time, which shall be a specified date or time not later than a time on the nineteenth day after the filing, is provided in the statement.

D. 1. A resident agent may resign by filing with the Office of the Secretary of State a copy of the resignation, signed and acknowledged by the registered agent, which contains a statement that notice of the resignation was given to the limited liability company at least thirty (30) days prior to the filing of the resignation by mailing or delivering the notice to the limited liability company at its address last known to the registered agent and specifying ~~such~~ the address therein.

2. ~~Unless a later time is specified in the~~ The resignation, it is effective thirty (30) days after it is filed, unless a later effective date or time, which shall be a specified date or time not later than a time on the nineteenth day after the filing, is provided in the resignation.

3. If a domestic limited liability company fails to obtain and designate a new registered agent ~~prior to the expiration of the thirty (30) days after the filing by the registered agent of a resignation statement~~ before the resignation is effective, the Secretary of State shall be deemed to be the registered agent of ~~such~~ the limited liability company until a new registered agent is designated.

E. If a limited liability company has no registered agent or the registered agent cannot be found, then service of process on the limited liability company 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 38. AMENDATORY 18 O.S. 2001, Section 2012.1, is amended to read as follows:

Section 2012.1

#### CANCELLATION OF ARTICLES OF ORGANIZATION

A. The articles of organization shall be canceled upon the dissolution and the completion of winding up of a limited liability company, or as provided in subsection B of this section, or upon the filing of a certificate of merger or consolidation if the limited liability company is not the surviving or resulting entity in a

merger or consolidation, or upon the conversion of a domestic limited liability company approved in accordance with Section ~~36~~ 2054.2 of this ~~act~~ title.

B. The articles of organization of a domestic limited liability company shall be deemed to be canceled if the domestic limited liability company shall fail to pay the annual fee provided in Section ~~39~~ 2055.2 of this ~~act~~ title or a registered agent fee to the Secretary of State due under Section 2055 of ~~Title 18 of the Oklahoma Statutes~~ this title for a period of three (3) years from the date it is due, the cancellation to be effective on the third anniversary of the due date.

C. On or before October 31 of each calendar year, the Secretary of State shall publish ~~once in at least one newspaper of general circulation of this state~~ a list of those domestic limited liability companies whose articles of organization were canceled on July 1 of the calendar year pursuant to this section. The Secretary of State may publish the list either once in at least one newspaper of general circulation of this state or on its website for at least thirty (30) days or both. If the Secretary of State publishes the list on its web site, the list shall be accessible without charge.

SECTION 39. AMENDATORY 18 O.S. 2001, Section 2013, is amended to read as follows:

Section 2013. A. Except as otherwise provided in the articles of organization, operating agreement, or this act, a limited liability company shall be managed by or under the authority of one or more managers who may but need not be members.

B. The articles of organization or operating agreement may prescribe qualifications for managers.

C. The number of managers shall be specified in or fixed in accordance with the articles of organization or operating agreement.

D. The articles of organization or operating agreement of a limited liability company may authorize the manager or managers of the limited liability company to adopt, amend, and repeal bylaws, or regulations, not inconsistent with the articles of organization and the operating agreement, to govern the affairs of the limited liability company. Unless otherwise provided in the articles of organization, operating agreement or enabling resolutions, bylaws, or regulations from the managers shall be considered a part of the operating agreement.

SECTION 40. AMENDATORY 18 O.S. 2001, Section 2017, is amended to read as follows:

Section 2017.

MEMBER OR MANAGER - LIMITATION OR ELIMINATION

OF LIABILITY - INDEMNIFICATION -

CREATION OF SERIES OR GROUPS

A. Subject to subsection B of this section, the articles of organization or operating agreement may:

1. Eliminate or limit the personal liability of a member or manager for monetary damages for breach of any duty provided for in Section 2016 of this title; and

2. Provide for indemnification of a member or manager for judgments, settlements, penalties, fines or expenses incurred in any proceeding because the person is or was a member or manager.

B. No provision permitted under subsection A of this section shall limit or eliminate the liability of a manager for:

1. Any breach of the manager's duty of loyalty to the limited liability company or its members;

2. Acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law; or

3. Any transaction from which the manager derived an improper personal benefit.

C. The articles of organization or operating agreement may define the scope of any duties owed by the members or managers to the limited liability company, if not manifestly unreasonable. A definition shall not eliminate the duty of loyalty or the obligation of good faith and fair dealing.

D. An operating agreement may provide for classes or groups of members or managers or both having such relative rights, powers and duties as the operating agreement may provide, and may provide for the creation in the manner provided in the operating agreement of additional classes or groups of members or managers or both having such relative rights, powers and duties as may from time to time be established, including rights, powers and duties senior to existing classes and groups of members or managers. An operating agreement may provide for the taking of an action, including the amendment of the operating agreement, without the vote or approval of any member or manager or class or group of members or managers, including an action to create under the operating agreement a class or group of membership interests that was not previously outstanding. An operating agreement may provide that any member or class or group of members shall have no voting rights.

SECTION 41. AMENDATORY 18 O.S. 2001, Section 2018, is amended to read as follows:

Section 2018.

~~Except as~~ Voting by managers may be on a per capita, number, financial interest, class, group or any other basis. Unless otherwise provided in the articles of organization or operating agreement, if the limited liability company has more than one manager, all decisions of the managers shall be made by majority vote of the managers on a per capita basis. An operating agreement

may grant to all or certain identified managers or a specified class or group of the managers the right to vote, separately or with all or any class or group of managers or members, on any matter.

SECTION 42. AMENDATORY 18 O.S. 2001, Section 2020, is amended to read as follows:

Section 2020. A. Voting by members may be on a per capita, number, financial interest, class, group or any other basis. Unless otherwise provided in the articles of organization or operating agreement, the members of a limited liability company ~~shall~~ vote in proportion to their respective capital interests. Except as otherwise provided in subsection D of this section or unless the context otherwise requires, references in ~~the Oklahoma Limited Liability Company Act~~ this act to a vote or the consent of the members ~~shall~~ mean a vote or consent of the members holding a majority of the capital interests. The vote or consent may be evidenced in the minutes of a meeting of the members or by a written consent in lieu of a meeting.

B. Except as otherwise provided in subsection D of this section or in the articles of organization or operating agreement, a majority vote of the members shall be required to approve the following matters:

1. The sale, exchange, lease, mortgage, pledge, or other transfer of all or substantially all of the assets of the limited liability company;

2. Merger of the limited liability company with another limited liability company or other business entity; and

3. An amendment to the articles of organization or operating agreement.

C. The articles of organization or operating agreement may alter the above voting rights and provide for any other voting rights of members.

D. Unless otherwise provided in the articles of organization or a written operating agreement, the unanimous vote or consent of the members shall be required to approve the following matters:

1. The dissolution of the limited liability company pursuant to paragraph 3 of Section 2037 of this title; or

2. An amendment to the articles of organization or an amendment to a written operating agreement:

a. which reduces the term of the existence of the limited liability company,

b. which reduces the required vote of members to approve a dissolution, merger or sale, exchange, lease, mortgage, pledge, or other transfer of all or substantially all of the assets of the limited liability company,

- c. which permits a member to voluntarily withdraw from the limited liability company, or
- d. which reduces the required vote of members to approve an amendment to the articles of organization or written operating agreement reducing the vote previously required on the matters described in this paragraph.

E. An operating agreement may grant to all or certain identified members or a specified class or group of the members the right to vote separately or with all or any class or group of the members or managers, on any matter.

SECTION 43. AMENDATORY 18 O.S. 2001, Section 2023, is amended to read as follows:

Section 2023. The contribution of a member to a limited liability company may be in cash, property, services rendered, or a promissory note or other binding obligation to contribute cash or property or to perform services. A person may be admitted to a limited liability company as a member of the limited liability company and may receive a membership interest in the limited liability company without making a contribution or being obligated to make a contribution to the limited liability company. Unless otherwise provided in the operating agreement, a person may be admitted to a limited liability company as a member of the limited liability company without acquiring a membership interest in the limited liability company. Unless otherwise provided in the operating agreement, a person may be admitted as the sole member of a limited liability company without making a contribution or being obligated to make a contribution to the limited liability company or without acquiring a membership interest in the limited liability company.

SECTION 44. AMENDATORY 18 O.S. 2001, Section 2025, is amended to read as follows:

Section 2025. Except as otherwise provided in the operating agreement:

1. The profits and losses of a limited liability company shall be allocated among the members, and among classes or groups of members, in proportion to their respective capital interests; and

2. Distributions of the limited liability company shall be made to the members, and among classes or groups of members, in proportion to their right to share in the profits of the limited liability company.

SECTION 45. AMENDATORY 18 O.S. 2001, Section 2033, is amended to read as follows:

Section 2033. A. Unless otherwise provided in an operating agreement:

1. A membership interest is not transferable; provided, however, that a member may assign the economic rights associated with a membership interest in whole or in part;

2. An assignment of the economic rights associated with a membership interest does not entitle the assignee to participate in the management and affairs of the limited liability company or to become or to exercise any rights or powers of a member;

3. An assignment entitles the assignee to share in profits and losses, to receive any distribution or distributions and to receive the allocation of income, gain, loss, deduction, or credit or similar item to which the assignor was entitled to the extent assigned;

4. Unless the assignee of an interest in a limited liability company becomes a member by virtue of that interest, the assignor continues to be a member and to have the power to exercise any rights of a member, unless the assignor is removed as a member either in accordance with the operating agreement or, after having assigned all of the membership interest, by an affirmative vote of the members who have not assigned their interests. The removal of an assignor shall not, by itself, cause the assignee to become a member;

5. Until an assignee of a membership interest becomes a member, the assignee has no liability as a member solely as a result of the assignment; and

6. The assignor of a membership interest is not released from liability as a member solely as a result of the assignment.

B. The operating agreement may provide that a member's interest in a limited liability company may be evidenced by a certificate of membership interest issued by the limited liability company and also may provide for the assignment or transfer of any membership interest represented by such a certificate and may make other provisions with respect to such certificates.

C. Unless otherwise provided in the operating agreement, the pledge of, or granting of a security interest, lien, or other encumbrance in or against any or all of the membership interest of a member is not an assignment and shall not cause the member to cease to be a member or cease to have the power to exercise any rights or powers of a member.

SECTION 46. AMENDATORY 18 O.S. 2001, Section 2034, is amended to read as follows:

Section 2034. On application to a court of competent jurisdiction by any judgment creditor of a member, the court may charge the membership interest of the member with payment of the unsatisfied amount of the judgment with interest. To the extent so charged, the judgment creditor has only the rights of an assignee of the membership interest. A charging order entered by a court pursuant to this section shall in no event be convertible into a membership interest through foreclosure or other action. This act

does not deprive any member of the benefit of any exemption laws applicable to his or her membership interest. This section shall be the sole and exclusive remedy of a judgment creditor with respect to the judgment debtor's membership interest.

SECTION 47. AMENDATORY 18 O.S. 2001, Section 2036, is amended to read as follows:

Section 2036. A. Unless the operating agreement specifically permits in writing the power to withdraw voluntarily, a member may not withdraw at any time. If the operating agreement specifically provides in writing the power to withdraw voluntarily, but the withdrawal occurs as a result of wrongful conduct of the member, a member's voluntary withdrawal shall constitute a breach of the operating agreement and the limited liability company may recover from the withdrawing member damages, including the reasonable cost of replacing the services that the withdrawn member was obligated to perform. The limited liability company may offset its damages against the amount otherwise distributable to the member, in addition to pursuing any remedies provided for in the operating agreement or otherwise available under applicable law. The limited liability company shall not, however, be entitled to any equitable remedy that would prevent a member from exercising the power to withdraw if such power is permitted in the operating agreement.

B. If a member who is an individual dies or a court of competent jurisdiction adjudges the member to be incompetent to manage the member's person or property, the member's ~~executor, administrator, guardian, conservator, or other legal~~ personal representative shall have all of the rights of an assignee of the member's interest. If a member is a corporation, trust or other entity and is dissolved or terminated, the powers of that member may be exercised by its personal representative.

C. If the sole member of a limited liability company dies or dissolves, or a court of competent jurisdiction adjudges the member to be incompetent or otherwise lacking legal capacity, the member's personal representative accedes to the membership interest and possesses all rights, powers and duties associated with the interest for the benefit of the incompetent member or the deceased member's estate.

D. The operating agreement may provide for the expulsion of a member, with or without cause, which shall include reasonable provision for the distributable interest.

SECTION 48. AMENDATORY 18 O.S. 2001, Section 2037, is amended to read as follows:

Section 2037. A limited liability company is dissolved and its affairs shall be wound up upon the earlier of:

1. The occurrence of the latest date on which the limited liability company is to dissolve set forth in the articles of organization;

2. The occurrence of events specified in writing in the operating agreement;

3. The written consent of all of the members or, if there is more than one class or group of members, then by the written consent of all of the members of each class or group;

4. At any time there are no members; provided, that the limited liability company is not dissolved and is not required to be wound up if:

a. unless otherwise provided in an operating agreement, within ninety (90) days or such other period as is provided for in the operating agreement after the occurrence of the event that terminated the continued membership of the last remaining member, the personal representative of the last remaining member agrees in writing to continue the limited liability company and to the admission of the personal representative of the member or its nominee or designee to the limited liability company as a member, effective as of the occurrence of the event that terminated the continued membership of the last remaining member; provided, that an operating agreement may provide that the personal representative of the last remaining member shall be obligated to agree in writing to continue the limited liability company and to the admission of the personal representative of the member or its nominee or designee to the limited liability company as a member, effective as of the occurrence of the event that terminated the continued membership of the last remaining member, or

b. a member is admitted to the limited liability company in the manner provided for in the operating agreement, effective as of the occurrence of the event that terminated the continued membership of the last remaining member, within ninety (90) days or such other period as is provided for in the operating agreement after the occurrence of the event that terminated the continued membership of the last remaining member, pursuant to a provision of the operating agreement that specifically provides for the admission of a member to the limited liability company after there is no longer a remaining member of the limited liability company; or

~~4.~~ 5. Entry of a decree of judicial dissolution under Section 2038 of this title.

SECTION 49. AMENDATORY 18 O.S. 2001, Section 2040, is amended to read as follows:

Section 2040. A. Upon the winding up of a limited liability company, the assets shall be distributed as follows:

1. Payment, or adequate provision for payment, shall be made to creditors, including to the extent permitted by law, members who are creditors, in satisfaction of liabilities of the limited liability company;

2. Except as provided in writing in the articles of organization or operating agreement, to members or former members in satisfaction of liabilities for distributions under Sections 2026 and 2027 of this title; and

3. Except as provided in writing in the articles of organization or operating agreement, to members and former members first for the return of their contributions and second respecting their membership interests, in proportions in which the members share in distributions.

B. A member who receives a distribution in violation of subsection A of this section, and who knew or should have known at the time of the distribution that the distribution violated subsection A of this section, shall be liable to a limited liability company for the amount of the distribution. A member who receives a distribution in violation of subsection A of this section, and who did not know and had no reason to know at the time of the distribution that the distribution violated subsection A of this section, shall not be liable for the amount of the distribution. Subject to subsection C of this section, this subsection shall not affect any obligation or liability of a member under an agreement or other applicable law for a distribution.

C. Unless otherwise agreed, a member who receives a distribution from a limited liability company shall have no liability under this act or other applicable law for the amount of the distribution after the expiration of three (3) years from the date of the distribution unless an action to recover the distribution from the member is commenced before the expiration of the three-year period and an adjudication of liability against the member is made in the action.

SECTION 50. AMENDATORY 18 O.S. 2001, Section 2049, is amended to read as follows:

Section 2049.

FOREIGN LIMITED LIABILITY COMPANY - ACTS NOT  
CONSTITUTING TRANSACTING BUSINESS IN STATE

A. The following activities of a foreign limited liability company, among others, do not constitute transacting business within the meaning of ~~the Oklahoma General Corporation Act~~ this act:

1. Maintaining, defending, or settling any proceeding;
2. Holding meetings of its members or carrying on any other activities concerning its internal affairs;
3. Maintaining bank accounts;

4. Maintaining offices or agencies for the transfer, exchange and registration of the foreign limited liability company's own securities or maintaining trustees or depositaries with respect to those securities;

5. Selling through independent contractors;

6. Soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts;

7. Creating or acquiring indebtedness, mortgages and security interests in real or personal property;

8. Securing or collecting debts or enforcing mortgages and security interest in property securing the debts, including the holding, protecting, renting, maintaining and operating real or personal property in this state so acquired;

9. ~~Holding, protecting, renting, maintaining and operating real or personal property in this state so acquired~~ Transacting business wholly in interstate commerce;

10. Selling or transferring title to property in this state to any person; ~~or~~

11. Conducting an isolated transaction that is completed within thirty (30) days and that is not one in the course of repeated transactions of a like nature; or

12. Investing in or acquiring royalties or other non-operating mineral or leasehold interests and the execution of division orders, contracts for sale, leases and other instruments incidental to the ownership of the nonoperating interests.

B. For the purposes of this section, any foreign limited liability company which owns income-producing real or tangible personal property in this state, other than property exempted by subsection A of this section, will be considered transacting business in this state.

C. A person shall not be deemed to be doing business in this state solely by reason of being a member or manager of a domestic limited liability company or a foreign limited liability company.

D. This section does not apply in determining the contracts or activities that may subject a foreign limited liability company to service of process or taxation in this state or to regulation under any other law of this state.

SECTION 51. AMENDATORY 18 O.S. 2001, Section 2054, is amended to read as follows:

Section 2054. A. Pursuant to an agreement of merger or consolidation, a domestic limited liability company may merge or consolidate with or into one or more domestic or foreign limited

liability companies or other business entities. As used in this section, "business entity" means a domestic or foreign corporation, business trust, common law trust, or unincorporated business including a partnership, whether general or limited.

B. Unless otherwise provided in the articles of organization or the operating agreement, a merger or consolidation shall be approved by each domestic limited liability company which is to merge or consolidate by a majority of the ~~members~~ membership interest or, if there is more than one class or group of members, then by a majority of the membership interest of each class or group. In connection with a merger or consolidation hereunder, rights or securities of, or interests in, a domestic limited liability company or other business entity which is a constituent party to the merger or consolidation may be exchanged for or converted into cash, property, rights or securities of, or interests in, the surviving or resulting domestic limited liability company or other business entity or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, rights or securities of, or interests in, a domestic limited liability company or other business entity which is not the surviving or resulting limited liability company or other business entity in the merger or consolidation. Notwithstanding prior approval, an agreement of merger or consolidation may be terminated or amended pursuant to a provision for such termination or amendment contained in the agreement of merger or consolidation.

C. If a domestic limited liability company is merging or consolidating pursuant to this section, the domestic limited liability company or other business entity surviving or resulting in or from the merger or consolidation shall file articles of merger or consolidation with the Office of the Secretary of State. The articles of merger or consolidation shall state:

1. The name and jurisdiction of formation or organization of each of the limited liability companies or other business entities which are to merge or consolidate;

2. That an agreement of merger or consolidation has been approved and executed by each of the domestic limited liability companies or other business entities which is to merge or consolidate;

3. The name of the surviving or resulting domestic limited liability company or other business entity;

4. The future effective date or time, which shall be a specific date or time ~~certain~~ not later than a time on the nineteenth day after the filing, of the merger or consolidation if it is not to be effective upon the filing of the articles of merger or consolidation;

5. That the agreement of merger or consolidation is on file at a place of business of the surviving or resulting domestic limited liability company or other business entity, and shall state the address thereof;

6. That a copy of the agreement of merger or consolidation shall be furnished by the surviving or resulting domestic limited liability company or other business entity, upon request and without cost, to any member of any domestic limited liability company or any person holding an interest in any other business entity which is to merge or consolidate;

7. In the case of a merger, any amendments or changes in the articles of organization of the surviving domestic limited liability company that are to be effected by the merger;

8. In the case of a consolidation, that the articles of organization of the resulting domestic limited liability company shall be as set forth in an attachment to the articles of consolidation; and

9. If the surviving or resulting entity is not a domestic limited liability company or business entity formed or organized pursuant to the laws of this state, a statement that the surviving or resulting other business entity agrees to be served with process in this state in any action, suit, or proceeding for the enforcement of any obligation of any domestic limited liability company which is to merge or consolidate; irrevocably appoints the Secretary of State as its agent to accept service of process in any action, suit, or proceeding; and specifies the address to which process shall be mailed to the entity by the Secretary of State.

D. Any failure to file the articles of merger or consolidation in connection with a merger or consolidation which was effective prior to September 1, 1992, shall not affect the validity or effectiveness of any such merger or consolidation.

E. A merger or consolidation shall be effective upon the filing with the Secretary of State of articles of merger or consolidation, unless a future effective date or time is provided in the articles of merger or consolidation.

F. Articles of merger or consolidation ~~shall act as articles of dissolution for~~ terminate the separate existence of a domestic limited liability company which is not the surviving or resulting entity in the merger or consolidation.

G. Once any merger or consolidation is effective pursuant to this section, for all purposes of the laws of this state, all of the rights, privileges, and powers of each of the domestic limited liability companies and other business entities that have merged or consolidated and all property, real, personal, and mixed, and all debts due to each domestic limited liability company or other business entity, as well as all other things and causes of action belonging to each domestic limited liability company or other business entity shall be vested in the surviving or resulting domestic limited liability company or other business entity, and shall thereafter be the property of the surviving or resulting domestic limited liability company or other business entity as they were of each domestic limited liability company or other business entity that has merged or consolidated, and the title to any real property vested by deed or otherwise, under the laws of this state,

in any domestic limited liability company or other business entity shall not revert or be in any way impaired by reason of this section, but all rights of creditors and all liens upon any property of each domestic limited liability company or other business entity shall be preserved unimpaired. All debts, liabilities and duties of each domestic limited liability company or other business entity that has merged or consolidated shall thereafter attach to the surviving or resulting domestic limited liability company or other business entity, and may be enforced against the surviving or resulting limited liability company or other entity to the same extent as if the debts, liabilities, and duties had been incurred or contracted by the surviving or resulting limited liability company or other entity. Unless otherwise agreed, a merger or consolidation of a domestic limited liability company, including a domestic limited liability company which is not the surviving or resulting entity in the merger or consolidation, shall not require the domestic limited liability company to wind up its affairs ~~pursuant to Section 2037 of this title~~ or pay its liabilities and distribute its assets ~~pursuant to Section 2040 of this title~~.

SECTION 52. AMENDATORY 18 O.S. 2001, Section 2054.1, is amended to read as follows:

Section 2054.1

CONVERSION OF CERTAIN ENTITIES

TO A LIMITED LIABILITY COMPANY

A. As used in this section, the term "business entity" means a domestic corporation, partnership, whether general or limited, business trust, common law trust, or other unincorporated association.

B. Any business entity may convert to a domestic limited liability company by complying with subsection H of this section and filing with the Secretary of State in accordance with Section 2007 of this title articles of conversion to a limited liability company that have been executed in accordance with Section 2006 of this title, to which shall be attached articles of organization that comply with Sections 2005 and 2008 of this title and have been executed by one or more authorized persons in accordance with Section 2006 of this title.

C. The articles of conversion to a limited liability company shall state:

1. The date on which the business entity was first formed;
2. The name of the business entity immediately prior to the filing of the articles of conversion to limited liability company; ~~and~~
3. The name of the limited liability company as set forth in its articles of organization filed in accordance with subsection B of this section; and

4. The future effective date or time, which shall be a specified date or time not later than a time on the nineteenth day after the filing, of the conversion to a limited liability company if it is not to be effective upon the filing of the articles of conversion to a limited liability company and the articles of organization.

D. Upon the filing in the Office of the Secretary of State of the articles of conversion to a limited liability company and the articles of organization or upon the future effective date or time of the articles of conversion to limited liability company and the articles of organization, the business entity shall be converted into a domestic limited liability company and the limited liability company shall thereafter be subject to all of the provisions of ~~the Oklahoma General Corporation Act~~ this act, except that notwithstanding Section 2004 of this title, the existence of the limited liability company shall be deemed to have commenced on the date the business entity was formed.

E. The conversion of any business entity into a domestic limited liability company shall not be deemed to affect any obligations or liabilities of the business entity incurred prior to its conversion to a domestic limited liability company or the personal liability of any person incurred prior to ~~such~~ the conversion.

F. When any conversion shall have become effective under this section, for all purposes of the laws of this state, all of the rights, privileges and powers of the business entity that has converted, and all property, real, personal and mixed, and all debts due to ~~such~~ the business entity, as well as all other things and causes of action belonging to ~~such~~ the business entity, shall be vested in the domestic limited liability company and shall thereafter be the property of the domestic limited liability company as they were of the business entity that has converted, and the title to any real property vested by deed or otherwise in ~~such~~ the business entity shall not revert or be in any way impaired by reason of this act, but all rights of creditors and all liens upon any property of ~~such~~ the business entity shall be preserved unimpaired, and all debts, liabilities and duties of the business entity that has converted shall thenceforth attach to the domestic limited liability company and may be enforced against it to the same extent as if the debts, liabilities and duties had been incurred or contracted by it.

G. Unless otherwise agreed or otherwise provided by any laws of this state applicable to the converting business entity, the converting business entity shall not be required to wind up its affairs or pay its liabilities and distribute its assets, and the conversion shall not be deemed to constitute a dissolution of ~~such~~ the business entity and shall constitute a continuation of the existence of the converting business entity in the form of a domestic limited liability company. When a business entity has been converted to a limited liability company pursuant to this section, the limited liability company shall, for all purposes of the laws of this state, be deemed to be ~~the same entity as~~ a continuation of the converting business entity.

H. ~~Prior to~~ Before filing the articles of conversion of a business entity to a limited liability company with the Office of the Secretary of State, the conversion shall be approved in the manner provided for by the document, instrument, agreement or other writing, as the case may be, governing the internal affairs of the business entity and the conduct of its business or by applicable law, as appropriate, and an operating agreement shall be approved by the same authorization required to approve the conversion.

I. In connection with a conversion hereunder, rights or securities of or interests in the business entity that is to be converted to a domestic limited liability company may be exchanged for or converted into cash, property, or rights or securities of or interests in the domestic limited liability company or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, or rights or securities of or interests in another domestic limited liability company or other business entity.

J. The provisions of this section shall not be construed to limit the accomplishment of a change in the law governing, or the domicile of, a business entity to this state by any other means provided for in an operating agreement or other agreement or as otherwise permitted by law, including by the amendment of an operating agreement or other agreement.

SECTION 53. AMENDATORY 18 O.S. 2001, Section 2054.2, is amended to read as follows:

Section 2054.2

APPROVAL OF CONVERSION OF

A LIMITED LIABILITY COMPANY

A. ~~A domestic limited liability company may convert to a corporation, partnership, whether general or limited, business trust, common law trust, or other unincorporated association organized, formed or created under the laws of this state,~~ business entity upon the authorization of such conversion in accordance with this section. As used in this section, the term "business entity" means a domestic corporation, partnership, whether general or limited, business trust, common law trust, or other unincorporated association.

B. If the operating agreement specifies the manner of authorizing a conversion of the limited liability company, the conversion shall be authorized as specified in the operating agreement.

C. If the operating agreement does not specify the manner of authorizing a conversion of the limited liability company and does not prohibit a conversion of the limited liability company, the conversion shall be authorized in the same manner as is specified in the operating agreement for authorizing a merger or consolidation that involves the limited liability company as a constituent party to a merger or consolidation.

D. If the operating agreement does not specify the manner of authorizing a conversion of the limited liability company or a merger or consolidation that involves the limited liability company as a constituent party and does not prohibit a conversion of the limited liability company, the conversion shall be authorized by the approval by the members of a majority of the membership interest or, if there is more than one class or group of members, then by a majority of the membership interest in each class or group of members, in either case, by members who own more than fifty percent (50%) of the then current percentage or other interest in the profits of the domestic limited liability company owned by all of the members or by the members in each class or group, as appropriate. Notwithstanding the foregoing, in addition to any other authorization required by this section, if the business entity into which the limited liability company is to convert does not afford all of its interest holders protection against personal liability for the debts of the business entity, the conversion must be authorized by any and all members who would be exposed to personal liability.

E. Unless otherwise agreed, the conversion of a domestic limited liability company to another business entity pursuant to this section shall not require the limited liability company to wind up its affairs or pay its liabilities and distribute its assets.

F. In connection with a conversion of a domestic limited liability company to another business entity pursuant to this section, rights or securities of or interests in the domestic limited liability company which are to be converted may be exchanged for or converted into cash, property, rights or securities of or interests in the business entity into which the domestic limited liability company is being converted or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, rights or securities of or interests in another business entity.

G. If the governing act of the domestic business entity into which the limited liability company is converting does not provide for the filing of a conversion notice with the Secretary of State, articles of conversion executed in accordance with Section 2006 of this title, shall be filed in the office of the Secretary of State in accordance with Section 2007 of this title. The articles of conversion shall state:

1. The name of the limited liability company and, if it has been changed, the name under which its articles of organization were originally filed;

2. The date of filing of its original articles of organization with the Secretary of State;

3. The future effective date or time, which shall be a date or time not later than the nineteenth day after the time of the filing, of the conversion if it is not to be effective upon the filing of the articles of conversion; and

4. That the conversion has been approved in accordance with this section.

H. Upon the filing of a conversion notice with the Secretary of State, whether under subsection G of this section or under the governing act of the domestic business entity into which the limited liability company is converting, the filing of any formation document required by the governing act of the domestic entity into which the limited liability company is converting, and payment to the Secretary of State of all prescribed fees, the Secretary of State shall certify that the limited liability company has filed all documents and paid all required fees, and thereupon the limited liability company shall cease to exist as a limited liability company of this state. The Secretary of State's certificate shall be prima facie evidence of the conversion by the limited liability company.

SECTION 54. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2054.3 of Title 18, unless there is created a duplication in numbering, reads as follows:

An operating agreement or other agreement may provide that contractual appraisal rights with respect to a membership interest or another interest in a limited liability company shall be available for any class or group of members or membership interests in connection with any amendment of an operating agreement, any merger or consolidation to which the limited liability company is a constituent party, any conversion of the limited liability company to another business entity, any transfer to or domestication in any jurisdiction by the limited liability company, or the sale of all or substantially all of the limited liability company's assets. The district court shall have jurisdiction to hear and determine any matter relating to any such appraisal rights.

SECTION 55. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2054.4 of Title 18, unless there is created a duplication in numbering, reads as follows:

A. An operating agreement may establish or provide for the establishment of one or more designated series of members, managers or membership interests having separate rights, powers or duties with respect to specified property or obligations of the limited liability company or profits and losses associated with specified property or obligations, and any such series may have a separate business purpose or investment objective.

B. Notwithstanding anything to the contrary set forth in this act or under other applicable law, if an operating agreement establishes or provides for the establishment of one or more series, and if separate and distinct records are maintained for any such series and the assets associated with any such series are held, directly or indirectly, including through a nominee or otherwise, and accounted for separately from the other assets of the limited liability company, or any other series thereof, and if the operating agreement so provides, and if notice of the limitation on liabilities of a series as referenced in this subsection is set forth in the articles of organization of the limited liability

company, then the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to a particular series shall be enforceable against the assets of such series only, and not against the assets of the limited liability company generally or any other series thereof, and, unless otherwise provided in the operating agreement, none of the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to the limited liability company generally or any other series thereof shall be enforceable against the assets of the series. Notice in articles of organization of the limitation on liabilities of a series as referenced in this subsection shall be sufficient for all purposes regardless of whether the limited liability company has established any series when the notice is included in the articles of organization, and there shall be no requirement that any specific series of the limited liability company be referenced in the notice. The fact that articles of organization containing the foregoing notice of the limitation on liabilities of a series are on file in the office of the Secretary of State shall constitute notice of the limitation on liabilities of a series.

C. Notwithstanding Section 2022 of this title, under an operating agreement or under another agreement, a member or manager may agree to be obligated personally for any or all of the debts, obligations and liabilities of one or more series.

D. An operating agreement may provide for classes or groups of members or managers associated with a series having such relative rights, powers and duties as the operating agreement may provide, and may make provision for the future creation in the manner provided in the operating agreement of additional classes or groups of members or managers associated with the series having such relative rights, powers and duties as may from time to time be established, including rights, powers and duties senior to existing classes and groups of members or managers associated with the series. An operating agreement may provide for the taking of an action, including the amendment of the operating agreement, without the vote or approval of any member or manager or class or group of members or managers, including an action to create under the provisions of the operating agreement a class or group of the series of membership interests that was not previously outstanding. An operating agreement may provide that any member or class or group of members associated with a series shall have no voting rights.

E. An operating agreement may grant to all or certain identified members or managers or a specified class or group of the members or managers associated with a series the right to vote separately or with all or any class or group of the members or managers associated with the series, on any matter. Voting by members or managers associated with a series may be on a per capita, number, financial interest, class, group or any other basis.

F. Unless otherwise provided in an operating agreement, the management of a series shall be vested in the members associated with the series in proportion to their membership interest, with the decision of members owning a majority of the membership interest controlling; provided, however, that if an operating agreement

provides for the management of the series, in whole or in part, by a manager, the management of the series, to the extent so provided, shall be vested in the manager who shall be chosen in the manner provided in the operating agreement. The manager of the series shall also hold the offices and have the responsibilities accorded to the manager as set forth in an operating agreement. A series may have more than one manager. Subject to paragraph 3 of Section 2014 of this title, a manager shall cease to be a manager with respect to a series as provided in an operating agreement. Except as otherwise provided in an operating agreement, any event under this chapter or in an operating agreement that causes a manager to cease to be a manager with respect to a series shall not, in itself, cause the manager to cease to be a manager of the limited liability company or with respect to any other series thereof.

G. Subject to subsections H and K of this section, and unless otherwise provided in an operating agreement, at the time a member associated with a series that has been established in accordance with subsection B of this section becomes entitled to receive a distribution with respect to the series, the member has the status of, and is entitled to all remedies available to, a creditor of the series, with respect to the distribution. An operating agreement may provide for the establishment of a record date with respect to allocations and distributions with respect to a series.

H. Notwithstanding Section 2040 of this title, a limited liability company may make a distribution with respect to a series that has been established in accordance with subsection B of this section. A limited liability company shall not make a distribution with respect to a series that has been established in accordance with subsection B of this section to a member to the extent that at the time of the distribution, after giving effect to the distribution, all liabilities of the series, other than liabilities to members on account of their membership interests with respect to the series and liabilities for which the recourse of creditors is limited to specified property of the series, exceed the fair value of the assets associated with the series, except that the fair value of property of the series that is subject to a liability for which the recourse of creditors is limited shall be included in the assets associated with the series only to the extent that the fair value of that property exceeds that liability. For purposes of the immediately preceding sentence, the term "distribution" shall not include amounts constituting reasonable compensation for present or past services or reasonable payments made in the ordinary course of business pursuant to a bona fide retirement plan or other benefits program. A member who receives a distribution in violation of this subsection, and who knew or should have known at the time of the distribution that the distribution violated this subsection, shall be liable to a series for the amount of the distribution. A member who receives a distribution in violation of this subsection, and who did not know and had no reason to know at the time of the distribution that the distribution violated this subsection, shall not be liable for the amount of the distribution. Subject to subsection C of Section 2040 of this title, which shall apply to any distribution made with respect to a series under this subsection, this subsection shall not affect any obligation or liability of a

member under an agreement or other applicable law for the amount of a distribution.

I. Unless otherwise provided in the operating agreement, a member shall cease to be associated with a series and to have the power to exercise any rights or powers of a member with respect to the series upon the assignment of all of the member's membership interest with respect to the series. Except as otherwise provided in an operating agreement, any event under this chapter or an operating agreement that causes a member to cease to be associated with a series shall not, in itself, cause the member to cease to be associated with any other series or terminate the continued membership of a member in the limited liability company or cause the termination of the series, regardless of whether the member was the last remaining member associated with the series.

J. Subject to Section 2037 of this title, except to the extent otherwise provided in the operating agreement, a series may be terminated and its affairs wound up without causing the dissolution of the limited liability company. The termination of a series established in accordance with subsection B of this section shall not affect the limitation on liabilities of the series provided by subsection B of this section. A series is terminated and its affairs shall be wound up upon the dissolution of the limited liability company under Section 2037 of this title or otherwise upon the first to occur of the following:

1. At the time specified in the operating agreement;
2. Upon the happening of events specified in the operating agreement;
3. Unless otherwise provided in the operating agreement, upon the affirmative vote or written consent of the members of the limited liability company associated with the series or, if there is more than one class or group of members associated with the series, then by each class or group of members associated with the series, in either case, by members associated with the series who own more than two-thirds of the then-current membership interest owned by all of the members associated with the series or by the members in each class or group of the series, as appropriate; or
4. The termination of the series under subsection L of this section.

K. Unless otherwise provided in the operating agreement, a manager associated with a series who has not wrongfully terminated the series or, if none, the members associated with the series or a person approved by the members associated with the series or, if there is more than one class or group of members associated with the series, then by each class or group of members associated with the series, in either case, by a majority of the membership interest owned by all of the members associated with the series or by the members in each class or group associated with the series, as appropriate, may wind up the affairs of the series; but, if the series has been established in accordance with subsection B of this section, the district court, upon cause shown, may wind up the

affairs of the series upon application of any member associated with the series, the member's personal representative or assignee, and in connection therewith, may appoint a liquidating trustee. The persons winding up the affairs of a series may, in the name of the limited liability company and for and on behalf of the limited liability company and the series, take all actions with respect to the series as are permitted under subsection A of Section 2039 of this title. The persons winding up the affairs of a series shall provide for the claims and obligations of the series and distribute the assets of the series as provided in Section 2040 of this title, which section shall apply to the winding up and distribution of assets of a series. Actions taken in accordance with this subsection shall not affect the liability of members and shall not impose liability on a liquidating trustee.

L. On application by or for a member or manager associated with a series established in accordance with subsection B of this section, the district court may decree termination of the series whenever it is not reasonably practicable to carry on the business of the series in conformity with an operating agreement.

M. If a foreign limited liability company that is registering to do business in this state in accordance with Section 2043 of this title is governed by an operating agreement that establishes or provides for the establishment of designated series of members, managers or membership interests having separate rights, powers or duties with respect to specified property or obligations of the foreign limited liability company or profits and losses associated with specified property or obligations, that fact shall be so stated on the application for registration as a foreign limited liability company. In addition, the foreign limited liability company shall state on the application whether the debts, liabilities and obligations incurred, contracted for or otherwise existing with respect to a particular series, if any, shall be enforceable against the assets of the series only, and not against the assets of the foreign limited liability company generally or any other series thereof, and, unless otherwise provided in the operating agreement, none of the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to the foreign limited liability company generally or any other series thereof shall be enforceable against the assets of the series.

SECTION 56. AMENDATORY 54 O.S. 2001, Section 1-901, is amended to read as follows:

Section 1-901.

Definitions. In this article:

~~(1) "General partner" means a partner in a partnership and a general partner in a limited partnership.~~

~~(2) "Limited partner" means a limited partner in a limited partnership.~~

~~(3) "Limited partnership" means a limited partnership created under the Oklahoma Revised Uniform Limited Partnership Act, Section~~

~~301 et seq. of Title 54 of the Oklahoma Statutes, predecessor law, or comparable law of another jurisdiction.~~

~~(4) "Partner" includes both a general partner and a limited partner~~ "Constituent partnership" means a constituent organization that is a partnership;

(2) "Constituent organization" means an organization that is party to a merger;

(3) "Converted organization" means the organization into which a converting organization converts pursuant to Sections 1-902 through 1-905 of this title;

(4) "Converting partnership" means a converting organization that is a partnership;

(5) "Converting organization" means an organization that converts into another organization pursuant to Section 1-902 of this title;

(6) "Governing statute" of an organization means the statute that governs the organization's internal affairs;

(7) "Organization" means a domestic general partnership, including a limited liability partnership; limited partnership; limited liability company; business trust; corporation; or any other unincorporated association. The term includes organizations regardless of whether organized for profit;

(8) "Organizational documents" means:

(i) for a general partnership, its partnership agreement;

(ii) for a limited partnership, its certificate of limited partnership and partnership agreement;

(iii) for a limited liability company, its articles of organization and operating agreement, or comparable records as provided in its governing statute;

(iv) for a business trust, its agreement of trust and declaration of trust;

(v) for a corporation for profit, its certificate of incorporation, bylaws, and other agreements among its shareholders which are authorized by its governing statute, or comparable records as provided in its governing statute; and

(vi) for any other organization, the basic records that create the organization and determine its internal governance and the relations among the persons that own it, have an interest in it, or are members of it;

(9) "Personal liability" means personal liability for a debt, liability, or other obligation of an organization, which is imposed

on a person that co-owns, has an interest in, or is a member of the organization:

- (i) by the organization's governing statute solely by reason of the person co-owning, having an interest in, or being a member of the organization; or
- (ii) by the organization's organizational documents under a provision of the organization's governing statute authorizing those documents to make one or more specified persons liable for all or specified debts, liabilities, and other obligations of the organization solely by reason of the person or persons co-owning, having an interest in, or being a member of the organization.

SECTION 57. AMENDATORY 54 O.S. 2001, Section 1-902, is amended to read as follows:

Section 1-902. Conversion of Partnership to Limited Partnership. ~~(a) A partnership may be converted to a limited partnership pursuant to this section.~~

~~(b) The terms and conditions of a conversion of a partnership to a limited partnership must be approved by all of the partners or by a number or percentage specified for conversion in the partnership agreement.~~

~~(c) After the conversion is approved by the partners, the partnership shall file a certificate of limited partnership in the jurisdiction in which the limited partnership is to be formed. The certificate must include:~~

~~(1) a statement that the partnership was converted to a limited partnership from a partnership;~~

~~(2) its former name; and~~

~~(3) a statement of the number of votes cast by the partners for and against the conversion and, if the vote is less than unanimous, the number or percentage required to approve the conversion under the partnership agreement.~~

~~(d) The conversion takes effect when the certificate of limited partnership is filed or at any later date specified in the certificate.~~

~~(e) A general partner who becomes a limited partner as a result of the conversion remains liable as a general partner for an obligation incurred by the partnership before the conversion takes effect. If the other party to a transaction with the limited partnership reasonably believes when entering the transaction that the limited partner is a general partner, the limited partner is liable for an obligation incurred by the limited partnership within ninety (90) days after the conversion takes effect. The limited partner's liability for all other obligations of the limited partnership incurred after the conversion takes effect is that of a~~

~~limited partner as provided in the Oklahoma Revised Uniform Limited Partnership Act, Section 301 et seq. of Title 54 of the Oklahoma Statutes~~ An organization other than a partnership may convert to a domestic partnership, and a domestic partnership may convert to another organization pursuant to this section and Sections 1-903 and 1-904 of this title and a plan of conversion, if:

(1) the other organization's governing statute authorizes the conversion;

(2) the conversion is not prohibited by the law of the jurisdiction that enacted the governing statute; and

(3) the other organization complies with its governing statute in effecting the conversion.

(b) A plan of conversion must be in a record and must include:

(1) the name and form of the organization before conversion;

(2) the name and form of the organization after conversion;

(3) the terms and conditions of the conversion, including the manner and basis for converting interests in the converting organization into any combination of money, interests in the converted organization, and other consideration; and

(4) the organizational documents of the converted organization.

(c) Subject to Section 1-909 of this title, a plan of conversion must be consented to by all the partners of a converting partnership.

(d) Subject to Section 1-909 of this title and any contractual rights, after a conversion is approved, and at any time before a filing is made under Section 1-903 of this title, a converting partnership may amend the plan or abandon the planned conversion:

(1) as provided in the plan; and

(2) except as prohibited by the plan, by the same consent as was required to approve the plan.

SECTION 58. AMENDATORY 54 O.S. 2001, Section 1-903, is amended to read as follows:

Section 1-903. Conversion of Limited Partnership to Partnership. (a) ~~A limited partnership may be converted to a partnership pursuant to this section.~~

~~(b) Notwithstanding a provision to the contrary in a limited partnership agreement, the terms and conditions of a conversion of a limited partnership to a partnership must be approved by all of the partners.~~

~~(c) After the conversion is approved by the partners, the limited partnership shall cancel its certificate of limited partnership.~~

~~(d) The conversion takes effect when the certificate of limited partnership is canceled.~~

~~(e) A limited partner who becomes a general partner as a result of the conversion remains liable only as a limited partner for an obligation incurred by the limited partnership before the conversion takes effect. Except as otherwise provided in Section 18 of this act, the partner is liable as a general partner for an obligation of the partnership incurred after After a plan of conversion is approved, if (i) converted organization is a domestic converted partnership, or (ii) the governing statute of the converted organization does not provide for the filing of a conversion notice with the Secretary of State:~~

(1) a converting partnership shall deliver to the Secretary of State for filing certificate of conversion, which must include:

- (i) a statement that the partnership was converted from, or has been converted into, another organization, as the case may be;
- (ii) the name and form of the converting organization;
- (iii) the date the conversion is effective under the governing statute of the converted organization;
- (iv) a statement that the conversion was approved as required by Section 1-902 of this title, if the converted organization is not a converted partnership; and
- (v) a statement that the conversion was approved as required by the governing statute of the converted organization, if the converted organization is a converted partnership.

(2) if the governing statute of the converted organization requires the filing of an organizational document with the Secretary of State, the converted organization shall deliver to the Secretary of State for filing the required organizational document.

(b) A conversion becomes effective, when the certificate of conversion takes effect.

SECTION 59. AMENDATORY 54 O.S. 2001, Section 1-904, is amended to read as follows:

Section 1-904. Effect of Conversion; Entity Unchanged. (a) ~~A partnership or limited partnership~~ An organization that has been converted pursuant to this article is for all purposes the same entity that existed before the conversion.

(b) When a conversion takes effect:

(1) all property owned by the converting ~~partnership or limited partnership~~ organization remains vested in the converted ~~entity~~ organization;

(2) all debts, liabilities and other obligations of the converting ~~partnership or limited partnership~~ organization continue as obligations of the converted ~~entity~~ organization; and

(3) an action or proceeding pending against the converting ~~partnership or limited partnership~~ organization may be continued as if the conversion had not occurred;

(4) except as prohibited by other law, all of the rights, privileges, immunities, powers, and purposes of the converting organization remain vested in the converted organization;

(5) except as otherwise provided in the plan of conversion, the terms and conditions of the plan of conversion take effect; and

(6) except as otherwise agreed, the conversion does not dissolve a converting partnership for the purposes of Article 8.

SECTION 60. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-909 of Title 54, unless there is created a duplication in numbering, reads as follows:

(a) If a partner of a converting or constituent partnership will have personal liability with respect to a converted or surviving organization, approval and amendment of a plan of conversion or merger are ineffective without the consent of the partner, unless:

(1) the partnership agreement provides for the approval of the conversion or merger with the consent of fewer than all the partners; and

(2) the partner has consented to the provision of the partnership agreement.

(b) A cancellation of a statement of qualification of a partnership as a limited liability partnership is ineffective without the consent of each general partner unless:

(1) the partnership agreement provides for the amendment with the consent of less than all the partners; and

(2) each partner that does not consent to the amendment has consented to the provision of the partnership agreement.

(c) A partner does not give the consent required by subsection (a) or (b) of this section merely by consenting to a provision of the partnership agreement that permits the partnership agreement to be amended with the consent of fewer than all the partners.

SECTION 61. AMENDATORY 54 O.S. 2001, Section 310.2, is amended to read as follows:

Section 310.2

CONVERSION OF CERTAIN ENTITIES  
TO A LIMITED PARTNERSHIP

A. As used in this section, the term "business entity" means a domestic corporation, general partnership, limited liability company, business trust, common law trust, or other unincorporated association.

B. Any business entity may convert to a domestic limited partnership by complying with subsection H of this section and filing with the Secretary of State in accordance with Section 314 of this title a certificate of conversion to limited partnership that has been executed in accordance with Section 312 of this title, to which shall be attached a certificate of limited partnership that complies with Section 309 of this title and has been executed in accordance with Section 312 of this title.

C. The certificate of conversion to limited partnership shall state:

1. The date on which the business entity was first formed;
2. The name of the business entity immediately prior to the filing of the certificate of conversion to limited partnership;
3. The name of the limited partnership as set forth in its certificate of limited partnership filed in accordance with subsection B of this section; and
4. The future effective date or time, which shall be a date or time certain, of the conversion to a limited partnership if it is not to be effective upon the filing of the certificate of conversion to limited partnership and the certificate of limited partnership.

D. Upon the filing with the Secretary of State the certificate of conversion to limited partnership and the certificate of limited partnership or upon the future effective date or time of the certificate of conversion to limited partnership and the certificate of limited partnership, the business entity shall be converted into a domestic limited partnership and the limited partnership shall thereafter be subject to all of the provisions of ~~the Oklahoma General Corporation Act~~ this act, except that notwithstanding Section 309 of this title, the existence of the limited partnership shall be deemed to have commenced on the date the business entity was formed.

E. The conversion of any business entity into a domestic limited partnership shall not be deemed to affect any obligations or liabilities of the business entity incurred prior to its conversion to a domestic limited partnership, or the personal liability of any person incurred prior to such conversion.

F. When any conversion shall have become effective under this section, for all purposes of the laws of this state, all of the rights, privileges and powers of the business entity that has converted, and all property, real, personal and mixed, and all debts due to the business entity, as well as all other things and causes of action belonging to the business entity, shall be vested in the domestic limited partnership and shall thereafter be the property of the domestic limited partnership as they were of the business entity that has converted, and the title to any real property vested by deed or otherwise in the business entity shall not revert or be in any way impaired by reason of this act; but all rights of creditors and all liens upon any property of the business entity shall be preserved unimpaired, and all debts, liabilities and duties of the business entity that has converted shall thenceforth attach to the domestic limited partnership, and may be enforced against it to the same extent as if the debts, liabilities and duties had been incurred or contracted by it.

G. Unless otherwise agreed or otherwise provided by any laws of this state applicable to the converting business entity, the converting business entity shall not be required to wind up its affairs or pay its liabilities and distribute its assets, and the conversion shall not be deemed to constitute a dissolution of the business entity and shall constitute a continuation of the existence of the converting business entity in the form of a domestic limited partnership. When a business entity has been converted to a limited partnership pursuant to this section, the limited partnership shall, for all purposes of the laws of this state, be deemed to be ~~the same entity as~~ a continuation of the converting business entity.

H. ~~Prior to~~ Before filing a certificate of conversion to limited partnership with the Secretary of State, the conversion shall be approved in the manner provided for by the document, instrument, agreement or other writing, as the case may be, governing the internal affairs of the business entity and the conduct of its business or by applicable law, as appropriate, and a partnership agreement shall be approved by the same authorization required to approve the conversion; provided that in any event, such approval shall include the approval of any person who, at the effective date or time of the conversion, shall be a general partner of the limited partnership.

I. In connection with a conversion hereunder, rights or securities of or interests in the business entity that is to be converted to a domestic limited partnership may be exchanged for or converted into cash, property, or rights or securities of or interests in the domestic limited partnership or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, or rights or securities of or interests in another domestic limited partnership or other business entity.

J. The provisions of this section shall not be construed to limit the accomplishment of a change in the law governing, or the domicile of, a business entity to this state by any other means provided for in a partnership agreement or other agreement or as otherwise permitted by law, including by the amendment of a partnership agreement or other agreement.

SECTION 62. AMENDATORY 54 O.S. 2001, Section 310.3, is amended to read as follows:

Section 310.3

APPROVAL OF CONVERSION  
OF A LIMITED PARTNERSHIP

A. A domestic limited partnership may convert to a ~~corporation, general partnership, limited liability company, business trust, common law trust, or other unincorporated association organized, formed or created under the laws of this state,~~ business entity upon the authorization of the conversion in accordance with this section.

B. If the partnership agreement specifies the manner of authorizing a conversion of the limited partnership, the conversion shall be authorized as specified in the partnership agreement.

C. If the partnership agreement does not specify the manner of authorizing a conversion of the limited partnership and does not prohibit a conversion of the limited partnership, the conversion shall be authorized in the same manner as is specified in the partnership agreement for authorizing a merger or consolidation that involves the limited partnership as a constituent party to the merger or consolidation.

D. If the partnership agreement does not specify the manner of authorizing a conversion of the limited partnership or a merger or consolidation that involves the limited partnership as a constituent party and does not prohibit a conversion of the limited partnership, the conversion shall be authorized by the approval:

1. By all general partners; and
2. By the limited partners or, if there is more than one class or group of limited partners, then by each class or group of limited partners, in either case, by limited partners who own more than fifty percent (50%) of the then current percentage or other interest in the profits of the domestic limited partnership owned by all of the limited partners or by the limited partners in each class or group, as appropriate.

Notwithstanding the foregoing, in addition to any other authorization required by this section, if the entity into which the limited partnership is to convert does not afford all of its interest holders protection against personal liability for the debts of the entity, the conversion must be authorized by any and all partners who would be exposed to personal liability.

E. Unless otherwise agreed, the conversion of a domestic limited partnership to another business entity pursuant to this section shall not require the limited partnership to wind up its affairs or pay its liabilities and distribute its assets.

F. In connection with a conversion of a domestic limited partnership to another business entity pursuant to this section, rights or securities of or interests in the domestic limited partnership that are to be converted may be exchanged for or converted into cash, property, rights or securities of or interests in the business entity into which the domestic limited partnership is being converted or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, rights or securities of or interests in another business entity.

G. If the governing act of the domestic business entity into which the limited partnership is converting does not provide for the filing of a conversion notice with the Secretary of State, the certificate of conversion executed in accordance with Section 312 of this title shall be filed in the office of the Secretary of State in accordance with Section 314 of this title. The certificate of conversion shall state:

1. The name of the limited partnership and, if it has been changed, the name under which its certificate of limited partnership were originally filed;

2. The date of filing of its original certificate of limited partnership with the Secretary of State;

3. The future effective date or time, which shall be a specified date or time not later than a time on the nineteenth day after filing, of the conversion if it is not to be effective upon the filing of the certificate of conversion; and

4. That the conversion has been approved in accordance with this section.

H. Upon the filing of a conversion notice with the Secretary of State, whether under subsection G of this section or under the governing act of the domestic business entity into which the limited partnership is converting, the filing of any formation document required by the governing act of the domestic entity into which the limited partnership is converting, and payment to the Secretary of State of all prescribed fees, the Secretary of State shall certify that the limited partnership has filed all documents and paid all required fees, and thereupon the limited partnership shall cease to exist as a limited partnership of this state. The Secretary of State's certificate shall be prima facie evidence of the conversion by the limited partnership.

I. Notwithstanding the foregoing, in addition to any other authorization required by this section, if the entity into which the limited partnership is to convert does not afford all of its interest holders protection against personal liability for the debts of the entity, the conversion must be authorized by any and all members who would be exposed to personal liability.

SECTION 63. This act shall become effective November 1, 2004.

Passed the Senate the 28th day of April, 2004.

---

Presiding Officer of the Senate

Passed the House of Representatives the 31st day of March, 2004.

---

Presiding Officer of the House  
of Representatives