STATE OF OKLAHOMA

1st Session of the 54th Legislature (2013)

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 1995 By: Grau

COMMITTEE SUBSTITUTE

An Act relating to legal entities; providing for the application of the Oklahoma General Corporation Act to nonstock corporations; amending 18 O.S. 2011, Sections 1006, 1007, 1008, 1013, 1021, 1022, 1027, as amended by Section 1, Chapter 1, O.S.L. 2012, 1031, 1035, 1041, 1049, 1056, 1058, 1060, 1064, 1065, 1067, 1068, 1070, 1071, 1072, 1073, 1075.2, 1075.3, 1076, 1077, 1080, 1081, 1082, 1083, 1084, 1085, 1086, 1087, 1090.2, 1090.3, 1090.4, 1090.5, 1091, 1092, 1095, 1096, 1097, 1099, 1100.1, 1100.2, 1119, 1120, 1130, 1133 and 1135 (18 O.S. Supp. 2012, Section 1027), which relate to the Oklahoma General Corporation Act; modifying content requirements and permissible inclusions for certificate of incorporation; modifying execution requirements for certain documents; updating statutory references; authorizing corporations to confer certain power upon shareholders; authorizing nonstock corporations to confer certain power upon members; providing requirements to registered offices; modifying entities required to have a registered agent in the state; modifying duties of registered agent; providing that certain information be given to registered agent; providing for promulgation of rules and enforcement; expanding certain voting power; eliminating procedure and requirements for classification of directors; providing for interpretation of certain references; modifying permissible indemnification; prohibiting elimination or impairment of right to certain indemnification, with exception; establishing capital of nonstock corporation for certain purposes; providing for nonstock corporation authority to redeem membership

interests; modifying information to be included in certain court orders; modifying scope of record date; providing for voting rights of nonstock corporation members; modifying definitions; providing procedures and requirements for merger of parent entity and subsidiary corporation or corporations; modifying meeting notice requirements; modifying sections of law that govern elections; expanding authority to request certain district court hearing; providing for removal of certain directors from office; requiring certain applicant for custodianship to provide copy of application to the Attorney General; modifying requirements for shareholder consent to taking of action without meeting, notice or vote; modifying information that may be included in certain merger or consolidation agreements; providing when certain certification is not required; authorizing certain electronic service of process as prescribed by the Secretary of State; authorizing promulgation of rules; stating certain requirements for mergers and surviving corporations; placing restrictions on merger of corporations and nonstock corporations; providing for access to proxy solicitation materials; providing for certain reimbursement; modifying merger or consolidation procedures for domestic nonstock not-for-profit corporations; defining term; providing for interpretation of references relating to constituent nonstock corporations; providing for merger or consolidation of corporations with other entities; modifying definitions; modifying agreement requirements; modifying contents of certificate of merger or consolidation; providing for interpretation of certain references; modifying exemption from certain prohibition; requiring simultaneous filings of certain certificates; modifying contents of certain certificates of conversion; requiring Secretary of State to retain certain information for certain time; placing restrictions on merger of charitable entity with other entity; modifying definition; modifying scope of appraisal rights; modifying procedure for perfecting appraisal rights; establishing fair rate of interest; expanding who may vote on certain sales, leases and exchanges; modifying required contents for certificate of dissolution; modifying procedure for dissolution of nonstock corporation; providing for application of law to corporation that expires by its own

limitation; providing for interpretation of references; modifying notice requirements for rejection of claims by a nonstock corporation; providing that certain provisions relating to distributions do not apply in certain circumstances; modifying requirements for revocation of voluntary dissolution; modifying requirements for revival, extension and restoration of certificate of incorporation; modifying requirement for foreign corporation doing business in this state; modifying requirements for successor registered agent for foreign corporation; modifying requirements and procedure for withdrawal of foreign corporation from state; amending 18 O.S. 2011, Sections 2001, 2012.2, 2015, 2019, 2020, 2025, 2030, 2032, 2033, 2034, 2035, 2036, 2040, 2054, 2054.1, 2054.2 and 2054.4, which relate to the Oklahoma Limited Liability Company Act; modifying definitions; providing for member's capital interest; providing for certain resigning member; expanding limited liability company's right of recovery from resigning member; clarifying statutory reference; modifying member voting rights; modifying allocation of profits and losses; modifying distributions; modifying certain date for measurement of effect of distribution; modifying member's power to voluntarily withdraw; providing for wrongful withdrawal; providing that member that withdraws is considered assignee of interest; authorizing buyout of expelled member's capital interest; modifying distribution of assets upon the winding up of a limited liability company; modifying definitions; providing for certain interests; modifying required contents for articles of merger or consolidation; prohibiting merger of charitable entity into other type of entity under certain circumstances; amending 54 O.S. 2011, Section 500-210A, which relates to the Oklahoma Uniform Limited Partnership Act; permitting the Secretary of State to send notices of annual reports electronically; providing for codification; and providing an effective date.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1004.1 of Title 18, unless there is created a duplication in numbering, reads as follows:

APPLICATION OF ACT TO NONSTOCK CORPORATIONS

A. Except as otherwise provided in subsections B and C of this section, the provisions of this chapter shall apply to nonstock corporations in the manner specified in paragraphs 1 through 4 of this subsection:

1. All references to shareholders of the corporation shall be deemed to refer to members of the corporation;

2. All references to the board of directors of the corporation shall be deemed to refer to the governing body of the corporation;

3. All references to directors or to members of the board of directors of the corporation shall be deemed to refer to members of the governing body of the corporation; and

4. All references to stock, capital stock, or shares thereof of a corporation authorized to issue capital stock shall be deemed to refer to memberships of a nonprofit nonstock corporation and to membership interests of any other nonstock corporation.

B. Subsection A of this section shall not apply to:

1. This subsection or to paragraph 4 of subsection A and paragraphs 1 and 2 of subsection B of Section 1006, subsection A of Section 1013, Sections 1027, 1035, 1060 and 1073, subsection B of Section 1075, and Sections 1076, 1077, 1083, 1084, 1085, 1086, 1087,

1092, 1097, 1119 and 1120 of Title 18 of the Oklahoma Statutes, which apply to nonstock corporations by their terms; and

2. Sections 1032, 1033, 1034, 1036, 1037, subsection D of 1038, 1039, 1042, 1043, 1044, 1045, 1046, 1047, 1056, 1057, 1058, 1059, 1061, 1064, 1067, 1075.1, 1078, 1079, 1081, 1082, 1090.3, 1095, 1096, 1130 through 1138 and 1142 of Title 18 of the Oklahoma Statutes and Section 33 of this act.

C. In the case of a nonprofit, nonstock corporation, subsection A of this section shall not apply to:

1. The sections listed in subsection B of this section; and

2. Paragraph 3 of subsection B of Section 1006, paragraph 2 of subsection A of Section 1030, Sections 1032 through 1055, 1062, subsections A and B of 1063, and 1091 of Title 18 of the Oklahoma Statutes.

D. For purposes of the Oklahoma General Corporation Act:

1. A "charitable nonstock corporation" is any nonprofit nonstock corporation that is exempt from taxation under Section 501(c)(3) of the United States Internal Revenue Code [26 U.S.C. § 501(c)(3)], or any successor provisions;

2. A "membership interest" is, unless otherwise provided in a nonstock corporation's certificate of incorporation, a member's share of the profits and losses of a nonstock corporation, or a member's right to receive distributions of the nonstock corporation's assets, or both;

3. A "nonprofit nonstock corporation" is a nonstock corporation that does not have membership interests;

4. A "nonstock corporation" is any corporation organized under this act that is not authorized to issue capital stock; and

5. The terms "not-for-profit" and "nonprofit" are synonymous.

SECTION 2. AMENDATORY 18 O.S. 2011, 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, whether domestic or foreign, then existing or which existed at any time during the preceding three (3) years,

b. names of partnerships whether general or limited, or domestic or foreign, then in good standing or

registered or which were in good standing or registered at any time during the preceding three (3) years,

c. names of limited liability companies, whether domestic or foreign, then in good standing or registered or which were in good standing or registered 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;

2. The address, including the street, number, city and county and postal code, 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. The foregoing provisions of this paragraph shall not apply to nonstock corporations. In the case of nonstock corporations, the fact that they are not authorized to issue capital stock shall be stated in the certificate of incorporation. The conditions of membership, or other criteria for identifying members, of nonstock corporations shall likewise be stated in the certificate of incorporation or the bylaws. Nonstock corporations shall have members, but the failure to have members shall not affect otherwise

valid corporate acts or work a forfeiture or dissolution of the corporation. Nonstock corporations may provide for classes or groups of members having relative rights, powers and duties, and may make provision for the future creation of additional classes or groups of members 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. Except as otherwise provided in the Oklahoma General Corporation Act, nonstock corporations may also provide that any member or class or group of members shall have full, limited, or no voting rights or powers, including that any member or class or group of members shall have the right to vote on a specified transaction even if that member or class or group of members does not have the right to vote for the election of members of the governing body of the corporation. Voting by members of a nonstock corporation may be on a per capita, number, financial interest, class, group, or any other basis set forth. The provisions referred to in the three preceding sentences may be set forth in the certificate of incorporation or the bylaws. If neither the certificate of incorporation nor the bylaws of a nonstock corporation state the conditions of membership, or other criteria for identifying members, the members of the corporation shall be deemed to be those entitled to vote for the election of the members of the governing body pursuant to the certificate of incorporation or bylaws of such corporation or otherwise until

thereafter otherwise provided by the certificate of incorporation or the bylaws;

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 governing body, the members, or any class or group of 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:

a. for a corporation, other than a nonstock corporation: "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.”, and

b. for a nonstock corporation:

“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 members or any class of them, any court of equitable jurisdiction within the State of Oklahoma may, on the application in a summary way of this corporation or of any creditor or member 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, order a meeting of the creditors or class of creditors, and/or of the members or class of members 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 members or class of members 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

members or class of members, 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 before 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.

D. Except for provisions included under paragraphs 1, 2, 5, 6 and 7 of subsection A of this section and paragraphs 2, 5 and 7 of subsection B of this section, and provisions included under

paragraph 4 of subsection A of this section specifying the classes, number of shares and par value of shares ~~the~~ a corporation other than a nonstock corporation is authorized to issue, any provision of the certificate of incorporation may be made dependent upon facts ascertainable outside the instrument, provided that the manner in which the facts shall operate upon the provision is clearly and explicitly set forth therein. As used in this subsection, the term "facts" includes, but is not limited to, the occurrence of any event, including a determination or action by any person or body, including the corporation.

SECTION 3. AMENDATORY 18 O.S. 2011, 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~~ signed:

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~~ any authorized officer of the 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. One signed instrument 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. 2011, Section 1008, is amended to read as follows:

Section 1008.

CERTIFICATE OF INCORPORATION; DEFINITION

The term "certificate of incorporation", as used in the Oklahoma General Corporation Act, unless the context requires otherwise, includes not only the original certificate of incorporation filed to create a corporation but also all other certificates, agreements of merger or consolidation, plans of reorganization, or other instruments, howsoever designated, which are filed pursuant to the provisions of Sections ~~6, 23 through 26, 32, 76 through 80, 81 through 87, or 118 of this act~~ 1006, 1023 through 1026, 1032, 1076 through 1087, or 1118 of this title, or any other section of ~~Title 18 of the Oklahoma Statutes~~ this title, and which have the effect of amending or supplementing in some respect a corporation's original certificate of incorporation.

SECTION 5. AMENDATORY 18 O.S. 2011, 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 of a corporation other than a nonstock corporation or initial members of the governing body of a nonstock corporation if they were named in the certificate of incorporation, or, before a corporation other than a nonstock corporation has received any payment for any of its stock, by its board of directors. After a

corporation other than a nonstock 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. Notwithstanding the foregoing, any corporation may, in its certificate of incorporation, confer the power to adopt, amend or repeal bylaws upon the shareholders or, in the case of a nonstock corporation, upon its members. The fact that such power has been so conferred upon the shareholders or members, as the case may be, shall not divest the 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 6. AMENDATORY 18 O.S. 2011, Section 1021, is amended to read as follows:

Section 1021.

REGISTERED OFFICE IN STATE; PRINCIPAL OFFICE OR PLACE OF BUSINESS IN STATE

A. Every corporation shall have and maintain in this state a registered office which may, but need not be, the same as its place of business.

B. Whenever the term "corporation's principal office or place of business in this state" or "principal office or place of business of the corporation in this state", or other term of like import, 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 office 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.

C. As contained in any certificate of incorporation or other document filed with the Secretary of State under this title, the address of a registered office shall include the street, number, city, state and postal code.

SECTION 7. AMENDATORY 18 O.S. 2011, 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~~ any of the following:

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~~ a domestic partnership whether general or limited and including a limited liability partnership or a limited liability limited partnership, a domestic limited liability company, or a domestic statutory trust; or

4. A foreign corporation other than the foreign corporation itself, a foreign partnership whether general or limited and including a limited liability partnership or a limited liability limited partnership, a foreign limited liability company, or a foreign statutory trust, if authorized to transact business in this state.

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 may be an individual or entity set forth in subsection A of this section; provided, that the foreign corporation may not be its own registered agent.

C. Each registered agent for a domestic corporation or foreign corporation shall:

1. If an entity, maintain a business office identical with the registered office which is open during regular business hours, or if an individual, be generally present at the registered office to accept service of process and otherwise perform the functions of a registered agent;

2. If a foreign entity, be authorized to transact business in this state; and

3. Accept service of process and other communications directed to the corporations for which it serves as registered agent and forward same to the corporation to which the service or communication is directed.

~~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.~~ D. Every corporation formed under the laws of this state or qualified to do business in this state shall provide to its registered agent, and update from time to time as necessary, the name, business address and business telephone number of a natural person who is an officer, director, employee, or designated agent of the corporation, who is then authorized to receive communications from the registered agent. Such person shall be deemed the communications contact for the corporation. Every registered agent shall retain, in paper or electronic form, the information required by this subsection concerning the current communications contact for each corporation for which he, she or it serves as a registered agent. If the corporation fails to provide the registered agent with a current communications contact, the registered agent may resign as the registered agent for such corporation pursuant to Section 1026 of this title.

E. 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 8. AMENDATORY 18 O.S. 2011, Section 1027, as amended by Section 1, Chapter 1, O.S.L. 2012 (18 O.S. Supp. 2012, 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~~ NONSTOCK 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 resignation is effective when the resignation is delivered unless the resignation specifies a later effective date or an effective date determined upon the happening of an event or events. A resignation that is conditioned upon the director failing to receive a specified vote for reelection as a director may provide that it is irrevocable. 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:

a. approve, adopt, or recommend to the shareholders any action or matter, other than the election or removal of directors, expressly required by this act to be submitted to shareholders for approval, or

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. ~~1. Subject to the requirements set forth in paragraphs 2 and 3 of this subsection,~~ The directors of any corporation organized under 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 first annual meeting held after the classification becomes effective; of the second class one (1) year thereafter; of the third class two (2) years thereafter; and at each annual election held after the classification becomes effective, directors shall be chosen for a full term, as the case may be, to succeed those whose terms expire. The certificate of incorporation or bylaw provision dividing the directors into classes may authorize the board of directors to assign members of the board then in office to such classes when the classification becomes effective. 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. In addition, the certificate of incorporation may confer upon one or more directors, whether or not elected separately by the holders of any class or series of stock, voting powers greater than or less than those of other directors. Any such provision conferring greater or lesser voting power shall apply to voting in any committee or subcommittee, unless otherwise provided in the certificate of incorporation or bylaws. 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.

~~2. a. Except as provided in paragraph 3 of this subsection, any domestic corporation with both:~~

~~(1) 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, and~~

~~(2) one thousand (1,000) or more shareholders of record,~~

~~shall have a board of directors that is divided into two or three classes, as set forth in the certificate~~

~~of incorporation or bylaws of such corporation, the term of office of each such class to expire as provided in paragraph 1 of this subsection. If such a domestic corporation does not have a certificate of incorporation or bylaw dividing its board of directors pursuant to this paragraph, the board shall automatically be divided into three classes consisting of a number of directors as nearly equal in number as possible, with the directors of such corporation placed sequentially one at a time into each class beginning with the first class, alphabetically by last name.~~

~~b. This paragraph shall cease to apply to any domestic corporation after such corporation either:~~

~~(1) ceases to have any 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, or~~

~~(2) ceases to have one thousand (1,000) or more shareholders of record on the last business day of each month for a consecutive twelve-month period.~~

~~3. If prior to September 1, 2010, the shareholders of a domestic corporation have approved the annual election of directors, incorporated the approval into the certificate of incorporation or bylaws of the corporation and the approval was still incorporated in the certificate of incorporation or bylaws on August 31, 2010, then paragraph 2 of this subsection shall not apply to the corporation in any event and the terms of office of any director of the corporation, regardless of whether elected before or after September 1, 2010, shall be determined by the bylaws or certificate of incorporation of the corporation as if paragraph 2 of this subsection was never enacted.~~

~~4. On or after January 1, 2015, an election not to be governed by paragraph 2 of this subsection may be made by a resolution adopted by the board of directors and approved by a vote of the shareholders at a special or annual meeting. Approval by shareholders shall require the favorable vote of a majority of the outstanding stock entitled to vote thereon, and a majority of the outstanding stock of each class entitled to vote thereon as a class, or such greater number or proportion required to amend a provision in the corporation's certificate of incorporation or bylaws that divides the board of directors into classes.~~

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 nonstock 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; and all references to stock, capital stock, or shares shall be deemed to refer to memberships of a nonprofit nonstock corporation and to membership interests of any other nonstock corporation.

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 9. AMENDATORY 18 O.S. 2011, Section 1031, is amended to read as follows:

Section 1031.

INDEMNIFICATION OF OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS; INSURANCE

A. A corporation shall have power to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative, other than an action by or in the right of the corporation, by reason of the fact that the person is or was a director, officer, employee, or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise, against expenses, including ~~attorneys'~~ attorney fees, judgments, fines, and amounts paid in settlement actually and reasonably incurred by the person in connection with the action, suit, or

proceeding if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe the conduct was unlawful. The termination of any action, suit, or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which the person reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that the conduct was unlawful.

B. A corporation shall have the power to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending, or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that the person is or was a director, officer, employee, or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise against expenses, including ~~attorneys'~~ attorney fees, actually and reasonably incurred by the person in connection with the defense or settlement of an action or suit if the person acted in good faith and in a manner the person reasonably believed to be in or not

opposed to the best interests of the corporation and except that no indemnification shall be made in respect of any claim, issue, or matter as to which the person shall have been adjudged to be liable to the corporation unless and only to the extent that the court in which the action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, the person is fairly and reasonably entitled to indemnity for expenses which the court shall deem proper.

C. To the extent that a present or former director or officer of a corporation has been successful on the merits or otherwise in defense of any action, suit, or proceeding referred to in subsection A or B of this section, or in defense of any claim, issue, or matter therein, the person shall be indemnified against expenses, including ~~attorneys'~~ attorney fees, actually and reasonably incurred by the person in connection therewith.

D. Any indemnification under the provisions of subsection A or B of this section, unless ordered by a court, shall be made by the corporation only as authorized in the specific case upon a determination that indemnification of the present or former director or officer is proper in the circumstances because the person has met the applicable standard of conduct set forth in subsection A or B of this section. This determination shall be made, with respect to a

person who is a director or officer of the corporation at the time of the determination:

1. By a majority vote of the directors who are not parties to the action, suit, or proceeding, even though less than a quorum;

2. By a committee of directors designated by a majority vote of directors, even though less than a quorum;

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

4. By the shareholders.

E. Expenses including attorney fees incurred by an officer or director in defending a civil ~~or~~, criminal, administrative or investigative action, suit, or proceeding may be paid by the corporation in advance of the final disposition of the action, suit, or proceeding upon receipt of an undertaking by or on behalf of the director or officer to repay the amount if it shall ultimately be determined that the person is not entitled to be indemnified by the corporation as authorized by the provisions of this section. Expenses including attorney fees incurred by former directors or officers or other employees and agents or persons serving at the request of the corporation as directors, officers, employees or agents of another corporation, partnership, joint venture, trust or other enterprise may be paid upon the terms and conditions, if any, as the corporation deems appropriate.

F. The indemnification and advancement of expenses provided by or granted pursuant to the other subsections of this section shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under any bylaw, agreement, vote of shareholders or disinterested directors, or otherwise, both as to action in the person's official capacity and as to action in another capacity while holding an office. A right to indemnification or to advancement of expenses arising under a provision of the certificate of incorporation or a bylaw shall not be eliminated or impaired by an amendment to the certificate or incorporation or the bylaw after the occurrence of the act or omission that is the subject of the civil, criminal, administrative or investigative action, suit or proceeding for which indemnification or advancement of expenses is sought, unless the provision in effect at the time of such act or omission explicitly authorizes such elimination or impairment after such action or omission has occurred.

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

the person's status as such, whether or not the corporation would have the power to indemnify the person against liability under the provisions of this section.

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

I. For purposes of this section, references to "other enterprises" shall include, but are not limited to, employee benefit plans; references to "fines" shall include, but are not limited to, any excise taxes assessed on a person with respect to an employee benefit plan; and references to "serving at the request of the corporation" shall include, but are not limited to, any service as a

director, officer, employee, or agent of the corporation which imposes duties on, or involves services, by the director, officer, employee, or agent with respect to an employee benefit plan, its participants, or beneficiaries; and a person who acted in good faith and in a manner the person reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner "not opposed to the best interests of the corporation" as referred to in this section.

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

K. The district court is vested with exclusive jurisdiction to hear and determine all actions for advancement of expenses or indemnification brought under this section or under any bylaw, agreement, vote of shareholders or disinterested directors, or otherwise. The court may summarily determine a corporation's obligation to advance expenses including ~~attorneys'~~ attorney fees.

SECTION 10. AMENDATORY 18 O.S. 2011, Section 1035, is amended to read as follows:

Section 1035.

DETERMINATION OF AMOUNT OF CAPITAL; CAPITAL, SURPLUS AND NET ASSETS DEFINED

Any corporation, by resolution of its board of directors, may determine that only a part of the consideration which shall be received by the corporation for any of the shares of its capital stock which it shall issue from time to time shall be capital; but, in case any of the shares issued shall be shares having a par value, the amount of the part of such consideration so determined to be capital shall be in excess of the aggregate par value of the shares issued for such consideration having a par value, unless all the shares issued shall be shares having a par value, in which case the amount of the part of such consideration so determined to be capital need be only equal to the aggregate par value of such shares. In each such case the board of directors shall specify in dollars the part of such consideration which shall be capital. If the board of directors shall not have determined, at the time of issue of any shares of the capital stock of the corporation issued for cash or within sixty (60) days after the issue of any shares of the capital stock of the corporation issued for consideration other than cash, what part of the consideration for such shares shall be capital, the capital of the corporation in respect of such shares shall be an amount equal to the aggregate par value of such shares having a par value, plus the amount of the consideration for such shares without par value. The amount of the consideration so determined to be capital in respect of any shares without par value shall be the stated capital of such shares. The capital of the corporation may

be increased from time to time by resolution of the board of directors directing that a portion of the net assets of the corporation in excess of the amount so determined to be capital be transferred to the capital account. The board of directors may direct that the portion of such net assets so transferred shall be treated as capital in respect of any shares of the corporation of any designated class or classes. The excess, if any, at any given time, of the net assets of the corporation over the amount so determined to be capital shall be surplus. "Net assets" means the amount by which total assets exceed total liabilities. Capital and surplus are not liabilities for this purpose. Notwithstanding anything in this section to the contrary, for purposes of this section and Sections 1041 and 1049 of this title, the capital of any nonstock corporation shall be deemed to be zero.

SECTION 11. AMENDATORY 18 O.S. 2011, Section 1041, is amended to read as follows:

Section 1041.

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

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

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

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

3. ~~Redeem~~

a. In the case of a corporation other than a nonstock corporation, redeem any of its shares unless their

redemption is authorized by subsection B of Section 1032 of this title and then only in accordance with the provisions of that section and the certificate of incorporation, or

b. In the case of a nonstock corporation, redeem any of its membership interests, unless their redemption is authorized by the certificate of incorporation and then only in accordance with the certificate of incorporation.

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

C. Shares of its own capital stock belonging to the corporation or to another corporation, if a majority of the shares entitled to vote in the election of directors of the other corporation is held, directly or indirectly, by the corporation, shall neither be entitled to vote nor be counted for quorum purposes. Nothing in this section shall be construed as limiting the right of any corporation to vote stock, including, but not limited to, its own stock, held by it in a fiduciary capacity.

D. Shares which have been called for redemption shall not be deemed to be outstanding shares for the purpose of voting or

determining the total number of shares entitled to vote on any matter on and after the date on which written notice of redemption has been sent to holders thereof and a sum sufficient to redeem those shares has been irrevocably deposited or set aside to pay the redemption price to the holders of the shares upon surrender of the certificates.

SECTION 12. AMENDATORY 18 O.S. 2011, Section 1049, is amended to read as follows:

Section 1049.

DIVIDENDS; PAYMENT; WASTING ASSET CORPORATIONS

A. The directors of every corporation, subject to any restrictions contained in its certificate of incorporation, may declare and pay dividends upon the shares of its capital stock, ~~or to its members if the corporation is a nonstock corporation,~~ either out of its surplus, as defined in and computed in accordance with the provisions of Sections 1035 and 1079 of this title, or in case there is no surplus, out of its net profits for the fiscal year in which the dividend is declared or the preceding fiscal year. If the capital of the corporation, computed in accordance with the provisions of Sections 1035 and 1079 of this title, shall have been diminished by depreciation in the value of its property, or by losses, or otherwise, to an amount less than the aggregate amount of the capital represented by the issued and outstanding stock of all classes having a preference upon the distribution of assets, the

directors of the corporation shall not declare and pay out of the net profits any dividends upon any shares of any classes of its capital stock until the deficiency in the amount of capital represented by the issued and outstanding stock of all classes having a preference upon the distribution of assets shall have been repaired. Nothing in this subsection shall invalidate or otherwise affect a note, debenture, or other obligation of the corporation paid by it as a dividend on shares of its stock, or any payment made thereon, if at the time the note, debenture, or obligation was delivered by the corporation, the corporation had either surplus or net profits as provided in this subsection from which the dividend could lawfully have been paid.

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

SECTION 13. AMENDATORY 18 O.S. 2011, Section 1056, is amended to read as follows:

Section 1056.

MEETINGS OF SHAREHOLDERS

A. 1. Meetings of shareholders may be held at such place, either within or without this state, as may be designated by or in the manner provided in the certificate of incorporation or bylaws or, if not so designated, as determined by the board of directors. If, pursuant to this paragraph or the certificate of incorporation or the bylaws of the corporation, the board of directors is authorized to determine the place of a meeting of shareholders, the board of directors may, in its sole discretion, determine that the meeting shall not be held at any place, but may instead be held solely by means of remote communication as authorized by paragraph 2 of this subsection.

2. If authorized by the board of directors in its sole discretion, and subject to such guidelines and procedures as the board of directors may adopt, shareholders and proxyholders not physically present at a meeting of shareholders may, by means of remote communication:

a. participate in a meeting of shareholders, and

b. be deemed present in person and vote at a meeting of shareholders whether the meeting is to be held at a designated place or solely by means of remote communication, provided that:

(1) the corporation shall implement reasonable measures to verify that each person deemed present and permitted to vote at the meeting by means of remote communication is a shareholder or proxyholder,

(2) the corporation shall implement reasonable measures to provide such shareholders and proxyholders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the shareholders, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with the proceedings, and

(3) if any shareholder or proxyholder votes or takes other action at the meeting by means of remote communication, a record of the vote or other action shall be maintained by the corporation.

B. 1. Unless directors are elected by written consent in lieu of an annual meeting as permitted by this subsection, an annual meeting of shareholders shall be held for the election of directors on a date and at a time designated by or in the manner provided for in the bylaws. Shareholders may, unless the certificate of incorporation otherwise provides, act by written consent to elect directors; provided, however, that if the consent is less than

unanimous, the action by written consent may be in lieu of holding an annual meeting only if all of the directorships to which directors could be elected at an annual meeting held at the effective time of the action are vacant and are filled by the action.

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

C. A failure to hold the annual meeting at the designated time or to elect a sufficient number of directors to conduct the business of the corporation shall not affect otherwise valid corporate acts or work a forfeiture or dissolution of the corporation except as may be otherwise specifically provided for in this act. If the annual meeting for election of directors is not held on the date designated therefor or action by written consent to elect directors in lieu of an annual meeting has not been taken, the directors shall cause the meeting to be held as soon as is convenient. If there is a failure to hold the annual meeting or action by written consent to elect directors in lieu of an annual meeting for a period of thirty (30) days after the date designated for the annual meeting, or if no date has been designated, for a period of thirteen (13) months after the latest to occur of the organization of the corporation, its last annual meeting, or the last action by written consent to elect directors in lieu of an annual meeting, the district court may summarily order a meeting to be held upon the application of any

shareholder or director. The shares of stock represented at the meeting, either in person or by proxy, and entitled to vote thereat, shall constitute a quorum for the purpose of the meeting, notwithstanding any provision of the certificate of incorporation or bylaws to the contrary. The district court may issue orders as may be appropriate, including, without limitation, orders designating the time and place of the meeting, the record date or dates for determination of shareholders entitled to notice of the meeting and to vote, and the form of notice of the meeting.

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

E. All elections of directors shall be by written ballot, unless otherwise provided for in the certificate of incorporation; if authorized by the board of directors, the requirement of a written ballot shall be satisfied by a ballot submitted by electronic transmission; provided that the electronic transmission must either set forth or be submitted with information from which it can be determined that the electronic transmission was authorized by the shareholder or proxyholder.

SECTION 14. AMENDATORY 18 O.S. 2011, Section 1058, is amended to read as follows:

Section 1058.

FIXING DATE FOR DETERMINATION OF SHAREHOLDERS OF RECORD

A. In order that the corporation may determine the shareholders entitled to notice of or to vote at any meeting of shareholders or any adjournment thereof, the board of directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the board of directors, and which record date shall not be more than sixty (60) nor less than ten (10) days before the date of such meeting. <u>If the board of directors so fixes a date, such date shall also be the record date for determining the shareholders entitled to vote at such meeting unless the board of directors determines, at the time it fixes such record date, that a later date on or before the date of the meeting shall be the date for making such determination.</u> If no record date is fixed by the board of directors, the record date for determining shareholders entitled to notice of or to vote at a meeting of shareholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of shareholders of record entitled to notice of or to vote at a meeting of shareholders shall apply to any adjournment of the meeting; provided, however, that the board of directors may fix a new record date for the adjourned meeting <u>and in such case shall also fix as the record date for shareholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of</u>

shareholders entitled to vote in accordance with the foregoing provisions of this section at the adjourned meeting.

B. 1. In order that the corporation may determine the shareholders entitled to consent to corporate action in writing without a meeting, the board of directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the board of directors, and which date shall not be more than ten (10) days after the date upon which the resolution fixing the record date is adopted by the board of directors. If no record date has been fixed by the board of directors, the record date for determining shareholders entitled to consent to corporate action in writing without a meeting, when no prior action by the board of directors is required by the Oklahoma General Corporation Act, shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is 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. If no record date has been fixed by the board of directors and prior action by the board of directors is required by the Oklahoma General Corporation Act, the record date for

determining shareholders entitled to consent to corporate action in writing without a meeting shall be at the close of business on the day on which the board of directors adopts the resolution taking such prior action.

2. The provisions of this subsection shall be effective with respect to corporate actions taken by written consent, and to such written consent or consents, as to which the first written consent is executed or solicited after November 1, 1988.

C. In order that the corporation may determine the shareholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the shareholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the board of directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall be not more than sixty (60) days prior to such action. If no record date is fixed, the record date for determining shareholders for any such purpose shall be at the close of business on the day on which the board of directors adopts the resolution relating thereto.

SECTION 15. AMENDATORY 18 O.S. 2011, 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 nonstock corporations ~~not authorized to issue stock~~, except that ~~subsection~~ subsections A and D of Section 1056 and subsections C ~~and~~, D and E 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; and all references to stock, capital stock, or shares thereof shall be deemed to refer to memberships of a nonprofit nonstock corporation and to membership interests of any other nonstock corporation.

B. Unless otherwise provided for in the certificate of incorporation or the bylaws of a nonstock corporation, and subject to subsection F of this section, each member shall be entitled at every meeting of members to one vote on each matter submitted to a vote of members. A member may exercise such voting rights 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; and

4. When a separate vote by a class or group or classes or groups is required, a majority of the members of such class or group or classes or groups, present in person or represented by proxy, shall constitute a quorum entitled to take action with respect to that vote on that matter and, in all matters other than the election of members of the governing body, the affirmative vote of the majority of the members of such class or group or classes or groups

present in person or represented by proxy at the meeting shall be the act of such class or group or classes or groups.

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.

F. Except as otherwise provided in the certificate of incorporation, in the bylaws, or by resolution of the governing body, the record date for any meeting or corporate action shall be deemed to be the date of such meeting or corporate action; provided,

however, that no record date may precede any action by the governing body fixing such record date.

SECTION 16. AMENDATORY 18 O.S. 2011, 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; provided, however, if the record date for determining the shareholders entitled to vote is less than ten (10) days before the meeting date, the list shall reflect the shareholders entitled to vote as of the tenth day before the meeting date, 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 list required by this section or to vote in person or by proxy at any meeting of shareholders.

SECTION 17. AMENDATORY 18 O.S. 2011, 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~~;

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.~~ 3. "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, and to make copies and extracts 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~~ record 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

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 18. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1065.1 of Title 18 unless there is created a duplication in numbering, reads as follows:

ACCESS TO PROXY SOLICITATION MATERIALS; PROXY EXPENSE REIMBURSEMENT

A. The bylaws may provide that if the corporation solicits proxies with respect to an election of directors, it may be

required, to the extent and subject to such procedures or conditions as may be provided in the bylaws, to include in its proxy solicitation materials, including any form of proxy it distributes, in addition to individuals nominated by the board of directors, one or more individuals nominated by a shareholder. Such procedures or conditions may include any of the following:

1. A provision requiring a minimum record or beneficial ownership, or duration of ownership, of shares of the corporation's capital stock, by the nominating shareholder, and defining beneficial ownership to take into account options or other rights in respect of or related to such stock;

2. A provision requiring the nominating shareholder to submit specified information concerning the shareholder and the shareholder's nominees, including information concerning ownership by such persons of shares of the corporation's capital stock, or options or other rights in respect of or related to such stock;

3. A provision conditioning eligibility to require inclusion in the corporation's proxy solicitation materials upon the number or proportion of directors nominated by shareholders or whether the shareholder previously sought to require such inclusion;

4. A provision precluding nominations by any person if such person, any nominee of such person, or any affiliate or associate of such person or nominee, has acquired or publicly proposed to acquire shares constituting a specified percentage of the voting

power of the corporation's outstanding voting stock within a specified period before the election of directors;

5. A provision requiring that the nominating shareholder undertake to indemnify the corporation in respect of any loss arising as a result of any false or misleading information or statement submitted by the nominating shareholder in connection with a nomination; and

6. Any other lawful condition.

B. The bylaws may provide for the reimbursement by the corporation of expenses incurred by a shareholder in soliciting proxies in connection with an election of directors, subject to such procedures or conditions as the bylaws may prescribe, including:

1. Conditioning eligibility for reimbursement upon the number or proportion of persons nominated by the shareholder seeking reimbursement or whether such shareholder previously sought reimbursement for similar expenses;

2. Limitations on the amount of reimbursement based upon the proportion of votes cast in favor of one or more of the persons nominated by the shareholder seeking reimbursement, or upon the amount spent by the corporation in soliciting proxies in connection with the election;

3. Limitations concerning elections of directors by cumulative voting pursuant to Section 1059 of Title 18 of the Oklahoma Statutes; or

4. Any other lawful condition.

C. No bylaw so adopted shall apply to elections for which any record date precedes its adoption.

SECTION 19. AMENDATORY 18 O.S. 2011, Section 1067, is amended to read as follows:

Section 1067.

NOTICE OF MEETINGS AND ADJOURNED MEETINGS

A. Whenever shareholders are required or permitted to take any action at a meeting, a written notice of the meeting shall be given which shall state the place, if any, date and hour of the meeting, the means of remote communications, if any, by which shareholders and proxyholders may be deemed to be present in person and vote at the meetings, the record date for determining the shareholders entitled to vote at the meeting, if such date is different from the record date for determining shareholders entitled to notice of the meeting and, in the case of a special meeting, the purpose or purposes for which the meeting is called.

B. Unless otherwise provided for in the Oklahoma General Corporation Act, the written notice of any meeting shall be given not less than ten (10) nor more than sixty (60) days before the date of the meeting to each shareholder entitled to vote at such meeting

as of the record date for determining the shareholders entitled to notice of the meeting. If mailed, notice is given when deposited in the United States mail, postage prepaid, directed to the shareholder at his address as it appears on the records of the corporation. An affidavit of the secretary or an assistant secretary or of the transfer agent or other agent of the corporation that the notice has been given, in the absence of fraud, shall be prima facie evidence of the facts stated therein.

C. When a meeting is adjourned to another time or place, unless the bylaws otherwise require, notice need not be given of the adjourned meeting if the time, place, if any, thereof, and the means of remote communications, if any, by which shareholders and proxyholders may be deemed to be present in person and vote at the adjourned meeting are announced at the meeting at which the adjournment is taken. At the adjourned meeting the corporation may transact any business which might have been transacted at the original meeting. If the adjournment is for more than thirty (30) days, ~~or if after the adjournment a new record date is fixed for the adjourned meeting,~~ a notice of the adjourned meeting shall be given to each shareholder of record entitled to vote at the meeting. If after the adjournment a new record date for shareholders entitled to vote is fixed for the adjourned meeting, the board of directors shall fix a new record date for notice of such adjourned meeting in accordance with subsection A of Section 1058 of this title, and

shall give notice of the adjourned meeting to each shareholder of record entitled to vote at such adjourned meeting as of the record date fixed for notice of such adjourned meeting.

SECTION 20. AMENDATORY 18 O.S. 2011, 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~~ Sections 1056 and 1060 of this 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 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~~ Sections 1056 and 1060 of this 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 21. AMENDATORY 18 O.S. 2011, 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 1056 or 1060 of this 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~~ upon application of the corporation itself, 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~~,~~ or 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.

C. If one or more directors has been convicted of a felony in connection with the duties of such director or directors to the corporation, or if there has been a prior judgment on the merits by a court of competent jurisdiction that one or more directors has committed a breach of the duty of loyalty in connection with the duties of such director or directors to that corporation, then, upon application by the corporation, or derivatively in the right of the corporation by any shareholder, in a subsequent action brought for such purpose, the district court may remove from office such director or directors if the court determines that the director or directors did not act in good faith in performing the acts resulting in the prior conviction or judgment and judicial removal is necessary to avoid irreparable harm to the corporation. In connection with such removal, the court may make such orders as are necessary to effect such removal. 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 director or directors whose removal is sought; and the registered agent shall forward immediately a copy of the application

to the corporation and to such director or directors, in a postpaid, sealed, registered letter addressed to such corporation and such director or directors at their post office addresses last known to the registered agent or furnished to the registered agent by the applicant. The court may make such order respecting further or other notice of such application as it deems proper under the circumstances.

SECTION 22. AMENDATORY 18 O.S. 2011, Section 1071, is amended to read as follows:

Section 1071.

APPOINTMENT OF CUSTODIAN OR RECEIVER OF CORPORATION ON DEADLOCK OR FOR OTHER CAUSE

A. The district court, upon application of any shareholder, may appoint one or more persons to be custodians, and, if the corporation is insolvent, to be receivers, of and for any corporation when:

1. At any meeting held for the election of directors the shareholders are so divided that they have failed to elect successors to directors whose terms have expired or would have expired upon qualification of their successors; or

2. The business of the corporation is suffering or is threatened with irreparable injury because the directors are so divided respecting the management of the affairs of the corporation that the required vote for action by the board of directors cannot

be obtained and the shareholders are unable to terminate this division; or

3. The corporation has abandoned its business and has failed within a reasonable time to take steps to dissolve, liquidate or distribute its assets.

B. A custodian appointed pursuant to the provisions of this section shall have all the powers and title of a receiver appointed by the court under applicable law, but the authority of the custodian is to continue the business of the corporation and not to liquidate its affairs and distribute its assets, except when the court shall otherwise order and except in cases arising pursuant to paragraph 3 of subsection A of this section.

C. In the case of a charitable nonstock corporation, the applicant shall provide a copy of any application referred to in subsection A of this section to the Attorney General of the State of Oklahoma within one (1) week of its filing with the district court.

SECTION 23. AMENDATORY 18 O.S. 2011, Section 1072, is amended to read as follows:

Section 1072.

POWERS OF COURT IN ELECTIONS OF DIRECTORS

A. The district court, in any proceeding instituted pursuant to the provisions of Section ~~56, 60 or 70~~ 1056, 1060 or 1070 of this ~~act~~ title, may determine the right and power of persons claiming to own stock, or in the case of a corporation without capital stock, of

the persons claiming to be members, to vote at any meeting of the shareholders ~~or members~~.

B. The district court may appoint a master to hold any election provided for in Section ~~56, 60 or 70~~ 1056, 1060 or 1070 of this ~~act~~ title under such orders and powers as it deems proper; and it may punish any officer or director for contempt in case of disobedience of any order made by the court; and, in case of disobedience by a corporation of any order made by the court, may enter a decree against such corporation for a penalty of not more than Five Thousand Dollars ($5,000.00).

SECTION 24. AMENDATORY 18 O.S. 2011, 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~~ 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. ~~1. With respect to any domestic corporation with both:~~

~~a. 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, and~~

~~b. one thousand (1,000) or more shareholders of record, any action by shareholders of the corporation shall be taken at an annual or special meeting of shareholders, and cannot be taken without a meeting of the shareholders, unless such action is approved by written consent, signed by all of the holders of all outstanding stock entitled to vote thereon and 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, 2010.~~

~~2. This subsection shall cease to apply to any domestic corporation after such corporation either:~~

~~a. ceases to have any 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, or~~

~~b. ceases to have one thousand (1,000) or more shareholders of record on the last business day of each month for a consecutive twelve-month period.~~

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

~~F.~~ E. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those shareholders or members, as the case may be, who have not consented in writing and who, if the action had been taken at a meeting, would have been entitled to notice of the meeting if the record date for notice of the meeting had been the date that written consents signed by a sufficient number of shareholders or members to take the action were delivered to the corporation as provided in subsection ~~C~~ B 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 25. AMENDATORY 18 O.S. 2011, Section 1075.2, is amended to read as follows:

Section 1075.2

ELECTRONIC NOTICE; EFFECTIVENESS; REVOCATION OF CONSENT

A. Without limiting the manner of 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 form of electronic transmission consented to by the shareholder to whom the notice is given. The consent shall be revocable by the shareholder by written notice to the corporation. The consent shall be deemed revoked if:

1. The corporation is unable to deliver by electronic transmission two consecutive notices given by the corporation in accordance with the consent; and

2. The inability becomes known to the secretary or an assistant secretary of the corporation or to the transfer agent, or other person responsible for the giving of notice; provided, however, the

inadvertent failure to treat the inability as a revocation shall not invalidate any meeting or other action.

B. Notice given pursuant to subsection A of this section shall be deemed given if by:

1. Facsimile telecommunication, when directed to a number at which the shareholder has consented to receive notice;

2. Electronic mail, when directed to an electronic mail address at which the shareholder has consented to receive notice;

3. A posting on an electronic network together with separate notice to the shareholder of the specific posting, upon the later of:

a. the posting, and

b. the giving of the separate notice; and

4. Any other form of electronic transmission, when directed to the shareholder in accordance with the shareholder's consent.

An affidavit of the secretary or an assistant secretary or of the transfer agent or other agent of the corporation that the notice has been given by a form of electronic transmission shall, in the absence of fraud, be prima facie evidence of the facts stated therein.

C. For purposes of this act, "electronic transmission" means any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved, and reviewed by a recipient thereof, and that may be

directly reproduced in paper form by such a recipient through an automated process.

D. ~~This section shall apply to a domestic corporation 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.~~

~~E.~~ This section shall not apply to Sections 1045 or 1111 of this title.

SECTION 26. AMENDATORY 18 O.S. 2011, Section 1075.3, is amended to read as follows:

Section 1075.3

SINGLE WRITTEN NOTICE TO SHAREHOLDERS SHARING AN ADDRESS

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~~ this title.

SECTION 27. AMENDATORY 18 O.S. 2011, Section 1076, is amended to read as follows:

Section 1076.

AMENDMENT OF CERTIFICATE OF INCORPORATION BEFORE RECEIPT OF PAYMENT FOR STOCK

A. Before a corporation has received any payment for any of its stock, or before it has any members, as applicable, it may amend its certificate of incorporation at any time or times, in any and as many respects as may be desired, so long as its certificate of incorporation as amended would contain only such provisions as it would be lawful and proper to insert in an original certificate of incorporation filed at the time of filing the amendment.

B. The amendment of certificate of incorporation authorized by the provisions of this section shall be adopted by a majority of the incorporators, if directors were not named in the original certificate of incorporation or have not yet been elected, or, if

directors were named in the original certificate of incorporation or have been elected and have qualified, by a majority of the directors. A certificate setting forth the amendment and certifying that the corporation has not received any payment for any of its stock, or that the corporation has no members, as applicable, and that the amendment has been duly adopted in accordance with the provisions of this section shall be executed, acknowledged and filed in accordance with the provisions of Section ~~7~~ 1007 of this ~~act~~ title. Upon such filing, the corporation's certificate of incorporation shall be deemed to be amended accordingly as of the date on which the original certificate of incorporation became effective, except as to those persons who are substantially and adversely affected by the amendment and as to those persons the amendment shall be effective from the filing date.

C. This section shall apply to a nonstock corporation before such a corporation has any members; provided, however, that all references to directors shall be deemed to be references to members of the governing body of the corporation.

SECTION 28. AMENDATORY 18 O.S. 2011, Section 1077, is amended to read as follows:

Section 1077.

AMENDMENT OF CERTIFICATE OF INCORPORATION AFTER RECEIPT OF PAYMENT FOR STOCK; NONSTOCK CORPORATIONS

A. 1. After a corporation has received payment for any of its capital stock, or after a nonstock corporation has members, it may amend its certificate of incorporation, from time to time, in any and as many respects as may be desired, so long as its certificate of incorporation as amended would contain only provisions as it would be lawful and proper to insert in an original certificate of incorporation filed at the time of the filing of the amendment; and if a change in stock or the rights of shareholders, or an exchange, reclassification, subdivision, combination, or cancellation of stock or rights of shareholders is to be made, provisions as may be necessary to effect the change, exchange, reclassification, subdivision, combination, or cancellation. In particular, and without limitation upon the general power of amendment, a corporation may amend its certificate of incorporation, from time to time, so as:

a. to change its corporate name,

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

c. to increase or decrease its authorized capital stock or to reclassify the same, by changing the number, par value, designations, preferences, or relative, participating, optional, or other special rights of the shares, or the qualifications, limitations, or restrictions of such rights, or by changing shares

with par value into shares without par value, or shares without par value into shares with par value either with or without increasing or decreasing the number of shares or by subdividing or combining the outstanding shares of any class or series of a class of shares into a greater or lesser number of outstanding shares,

d. to cancel or otherwise affect the right of the holders of the shares of any class to receive dividends which have accrued but have not been declared,

e. to create new classes of stock having rights and preferences either prior and superior or subordinate and inferior to the stock of any class then authorized, whether issued or unissued, or

f. to change the period of its duration.

2. Any or all changes or alterations provided for in paragraph 1 of this subsection may be effected by one certificate of amendment.

B. Every amendment authorized by the provisions of subsection A of this section shall be made and effected in the following manner:

1. If the corporation has capital stock, its board of directors shall adopt a resolution setting forth the amendment proposed, declaring its advisability, and either calling a special meeting of the shareholders entitled to vote in respect thereof for the

consideration of the amendment or directing that the amendment proposed be considered at the next annual meeting of shareholders. The special or annual meeting shall be called and held upon notice in accordance with the provisions of Section 1067 of this title. The notice shall set forth the amendment in full or a brief summary of the changes to be effected thereby~~, as the directors shall deem advisable~~. At the meeting, a vote of the shareholders entitled to vote thereon shall be taken for and against the proposed amendment. If a majority of the outstanding stock entitled to vote thereon, and a majority of the outstanding stock of each class entitled to vote thereon as a class, has been voted in favor of the amendment, a certificate setting forth the amendment and certifying that the amendment has been duly adopted in accordance with the provisions of this section shall be executed, acknowledged, and filed and shall become effective in accordance with the provisions of Section 1007 of this title.

2. The holders of the outstanding shares of a class shall be entitled to vote as a class upon a proposed amendment, whether or not entitled to vote thereon by the provisions of the certificate of incorporation, if the amendment would increase or decrease the aggregate number of authorized shares of the class, increase or decrease the par value of the shares of the class, or alter or change the powers, preferences, or special rights of the shares of the class so as to affect them adversely. If any proposed amendment

would alter or change the powers, preferences, or special rights of one or more series of any class so as to affect them adversely, but shall not so affect the entire class, then only the shares of the series so affected by the amendment shall be considered a separate class for the purposes of this paragraph. The number of authorized shares of any such class or classes of stock may be increased or decreased, but not below the number of shares thereof then outstanding, by the affirmative vote of the holders of a majority of the stock of the corporation entitled to vote irrespective of the provisions of this paragraph, if so provided in the original certificate of incorporation, in any amendment thereto which created the class or classes of stock or which was adopted prior to the issuance of any shares of the class or classes of stock, or in any amendment thereto which was authorized by a resolution or resolutions adopted by the affirmative vote of the holders of a majority of the class or classes of stock.

3. If the corporation ~~has no capital stock~~ is a nonstock corporation, then the governing body thereof shall adopt a resolution setting forth the amendment proposed and declaring its advisability. If a majority of all the members of the governing body shall vote in favor of the amendment, a certificate thereof shall be executed, acknowledged, and filed and shall become effective in accordance with the provisions of Section 1007 of this title. The certificate of incorporation of ~~a~~ any nonstock

corporation ~~without capital stock~~ may contain a provision requiring an amendment thereto to be approved by a specified number or percentage of the members or of any specified class of members of the corporation in which event the proposed amendment shall be submitted to the members or to any specified class of members of the corporation ~~without capital stock~~ in the same manner, so far as applicable, as is provided for in this section for an amendment to the certificate of incorporation of a stock corporation; and in the event of the adoption thereof by the members, a certificate evidencing the amendment shall be executed, acknowledged, and filed and shall become effective in accordance with the provisions of Section 1007 of this title.

4. Whenever the certificate of incorporation shall require action by the board of directors <u>of a corporation other than a nonstock corporation or by the governing body of a nonstock corporation</u>, by the holders of any class or series of shares <u>or by the members</u>, or by the holders of any other securities having voting power, the vote of a greater number or proportion than is required by the provisions of the Oklahoma General Corporation Act, the provision of the certificate of incorporation requiring a greater vote shall not be altered, amended, or repealed except by a greater vote.

C. The resolution authorizing a proposed amendment to the certificate of incorporation may provide that at any time prior to

the effectiveness of the filing of the amendment with the Secretary of State, notwithstanding authorization of the proposed amendment by the shareholders of the corporation or by the members of a nonstock corporation, the board of directors or governing body may abandon the proposed amendment without further action by the shareholders or members.

SECTION 29. AMENDATORY 18 O.S. 2011, 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, if any, 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 or without a vote of members pursuant to paragraph 3 of subsection B of Section 1077 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 1007 of this 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 30. AMENDATORY 18 O.S. 2011, 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, <u>which amendments or changes may amend and restate the certificate of incorporation of the surviving corporation in its entirety,</u> 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. 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 before 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; provided, that such certification on the agreement shall not be required if a certificate of merger or consolidation is filed in lieu of filing the agreement. 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, which may

be amended and restated, that are desired to be effected by the merger, which amendments or changes may amend and restate the certificate of incorporation of the surviving corporation in its entirety, 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; provided, that such certification on the agreement shall not be required if a certificate of merger or consolidation is filed in lieu of filing the agreement.

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 entities to the merger,

b. each share or fraction of a share of the capital stock of the constituent corporation outstanding immediately before 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 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 before 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 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 before 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, 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:

(a) to reduce the number of classes and shares of capital stock or other equity interests or units that the surviving entity is authorized to issue, and

(b) to eliminate any provision authorized by subsection D of Section 1027 of this title; 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 nor any provision of a surviving entity's organizational documents required by division (1) of subparagraph g of paragraph 1 of this subsection 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 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 shares of stock of the constituent corporation converted in the merger were acquired; provided, that any shareholder who immediately before 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,

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 before 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 before 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 subsection have been satisfied; provided, that such certification on the agreement shall not be required if a certificate of merger or consolidation is filed in lieu of filing the agreement. 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 before the filing.

SECTION 31. AMENDATORY 18 O.S. 2011, 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 is 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 may be amended and restated, that are effected by the merger, which amendments or changes may amend and restate the certificate of incorporation of the surviving corporation in its entirety, 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 domestic corporation, the authorized capital stock of each constituent corporation which is not a domestic corporation; 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~~ Section 2004 of Title 12 of the Oklahoma Statutes, 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 subsection A 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 32. AMENDATORY 18 O.S. 2011, 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 <u>or</u>

subsection C of Section 1087 of this title, as applicable, shall also apply to a merger pursuant to the provisions of this section, and the terms and conditions of the merger shall obligate the surviving corporation to provide the agreement, and take the actions, required by subsection D of Section 1082 of this title or subsection C of Section 1087 of the title, as applicable.

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, 1085 or 1087 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.

F. This section shall apply to nonstock corporations if the parent corporation is such a corporation and is the surviving corporation of the merger; provided, however, that references to the directors of the parent corporation shall be deemed to be references to members of the governing body of the parent corporation, and references to the board of directors of the parent corporation shall

be deemed to be references to the governing body of the parent corporation.

G. Nothing in this section shall be deemed to authorize the merger of a corporation with a charitable nonstock corporation, if the charitable status of such charitable nonstock corporation would thereby be lost or impaired.

SECTION 33. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1083.1 of Title 18, unless there is created a duplication in numbering, reads as follows:

MERGER OF PARENT ENTITY AND SUBSIDIARY CORPORATION OR CORPORATIONS

A. In any case in which:

1. At least ninety percent (90%) of the outstanding shares of each class of the stock of a corporation or corporations, other than a corporation which has in its certificate of incorporation the provision required by division (1) of subparagraph g of paragraph 1 of subsection G of Section 1081 of this title, of which class there are outstanding shares that, absent this subsection, would be entitled to vote on such merger, is owned by an entity;

2. One or more of such corporations is a corporation of this state; and

3. Any entity or corporation that is not an entity or corporation of this state is an entity or corporation of any

other state or the District of Columbia, the laws of which do not forbid such merger,

the entity having such stock ownership may either merge the corporation or corporations into itself and assume all of its or their obligations, or merge itself, or itself and one or more of such corporations, into one of the other corporations by:

a. authorizing such merger in accordance with such entity's governing documents and the laws of the jurisdiction under which such entity is formed or organized, and

b. acknowledging and filing with the Secretary of State, in accordance with Section 1007 of Title 18 of the Oklahoma Statutes, a certificate of such ownership and merger certifying:

(1) that such merger was authorized in accordance with such entity's governing documents and the laws of the jurisdiction under which such entity is formed or organized, such certificate executed in accordance with such entity's governing documents and in accordance with the laws of the jurisdiction under which such entity is formed or organized, and

(2) the type of entity of each constituent entity to the merger; provided, however, that in case

the entity shall not own all the outstanding stock of all the corporations, parties to a merger as aforesaid:

(a) the certificate of ownership and merger 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 constituent party upon surrender of each share of the corporation or corporations not owned by the entity, or the cancellation of some or all of such shares, and

(b) such terms and conditions of the merger may not result in a holder of stock in a corporation becoming a general partner in a surviving entity that is a partnership, other than a limited liability partnership or a limited liability limited partnership.

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

certificate of ownership and merger. 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 entity. If the surviving constituent party exists under the laws of the District of Columbia or any state or jurisdiction other than this state, subsection D of Section 1082 of Title 18 of the Oklahoma Statutes shall also apply to a merger under this section; if the surviving constituent party is the entity, the word "corporation" where applicable, as used in subsection D of Section 1082 of Title 18 of the Oklahoma Statutes, shall be deemed to include an entity as defined herein; and the terms and conditions of the merger shall obligate the surviving constituent party to provide the agreement, and take the actions required by subsection D of Section 1082 of Title 18 of the Oklahoma Statutes.

B. Sections 1088, 1090 and 1127 of Title 18 of the Oklahoma Statutes shall, insofar as they are applicable, apply to a merger under this section, and Section 1089 and subsection E of Section 1081 of Title 18 of the Oklahoma Statutes shall apply to a merger under this section in which the surviving constituent party is a corporation of this state. For purposes of this subsection, references to “agreement of merger” in subsection F of Section 1081 of Title 18 of the Oklahoma Statutes shall mean the terms and condition of the merger set forth in the certificate of ownership

and merger, and references to “corporation” in Sections 1088, 1089, and 1090 of Title 18 of the Oklahoma Statutes and Section 1127 of Title 18 of the Oklahoma Statutes shall be deemed to include the entity, as applicable. Section 1091 of Title 18 of the Oklahoma Statutes shall not apply to any merger effected under this section, except as provided in subsection C of this section.

C. In the event all of the stock of an Oklahoma corporation party to a merger effected under this section is not owned by the entity immediately prior to the merger, the shareholders of such Oklahoma corporation party to the merger shall have appraisal rights as set forth in Section 1091 of Title 18 of the Oklahoma Statutes.

D. A merger may be effected under this section although one or more of the constituent parties is a corporation organized under the laws of a jurisdiction other than one of the United States, provided that the laws of such jurisdiction do not forbid such merger.

E. As used in this section only, the term:

1. "Constituent party" means an entity or corporation to be merged pursuant to this section;

2. "Entity" means a partnership, whether general or limited, and including a limited liability partnership and a limited liability limited partnership, a limited liability company, and any unincorporated nonprofit or for-profit association, trust or

enterprise having members or having outstanding shares of stock or other evidences of financial, beneficial or membership interest therein, whether formed by agreement or under statutory authority or otherwise; and

3. "Governing documents" means a partnership agreement, operating agreement, articles of association or any other instrument containing the provisions by which an entity is formed or organized.

SECTION 34. AMENDATORY 18 O.S. 2011, 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. Subject to subsection D of this section:

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 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 or membership interests of each of the constituent corporations into memberships or membership interests of the corporation surviving or resulting from the merger or consolidation, or of canceling some or all of the memberships or membership interests, and

e. other details or provisions as are deemed desirable~~.~~; and

2. The agreement so adopted shall be executed and acknowledged in accordance with 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 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~~ Subject to subsection D of this section, 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~~ Due 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 and to each other member who is entitled to vote on the merger under the certificate of incorporation or the bylaws of such 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 the agreement is adopted by a majority of the ~~voting power of voting~~ members of each corporation ~~shall be for the adoption of the agreement~~ entitled to vote for the election of the members of the governing body of the corporation and any other members entitled to vote on the merger under the certificate of

incorporation or the bylaws of such corporation, then that fact shall be certified on the agreement by the officer of each corporation performing the duties ordinarily performed by the secretary or assistant secretary of a corporation; provided, that such certification on the agreement shall not be required if a certificate of merger or consolidation is filed in lieu of filing the agreement. The agreement shall be ~~executed, acknowledged and~~ adopted and certified by each constituent corporation in accordance with this section, and it shall be 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, and the reference therein to "shareholder" shall be deemed to include "member" hereunder.

D. ~~If~~ Notwithstanding subsection B or C of this section, if, under the provisions of the certificate of incorporation or the bylaws 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, or for the merger, other than the members of ~~that~~ the governing 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,~~ no further action by the governing body or the members of such corporation shall be necessary if the resolution approving an agreement of merger or consolidation has been adopted by a majority of all the members of the governing body thereof, and 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; provided, that such certification on the agreement shall not be required if a certificate of merger or consolidation is filed in lieu of filing the agreement, and thereafter the same procedure shall be followed to consummate the merger or consolidation.

E. The provisions of subsection D of Section 1081 of this title shall apply to a merger under this section; provided, however, that references to the board of directors, to shareholders, and to shares of a constituent corporation shall be deemed to be references to the governing body of the corporation, to members of the corporation, and to memberships or membership interests, as applicable, respectively.

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

~~F.~~ G. 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 35. AMENDATORY 18 O.S. 2011, 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 <u>or membership interests</u> of each of the constituent corporations into ~~members~~ <u>memberships or membership interests</u> of the corporation surviving or resulting from such merger or consolidation, or of canceling some or all of the memberships <u>or membership interests</u>,

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 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 1084 of this 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 1082 of this 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~~ Section 2004 of Title 12 of the Oklahoma Statutes, 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 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 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 1081 of this 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.

F. The provisions of subsection D of Section 1081 of this title shall apply to a merger under this section; provided, however, that references to the board of directors, to shareholders, and to shares of a constituent corporation shall be deemed to be references to the governing body of the corporation, to members of the corporation, and to memberships or membership interests, as applicable, respectively.

G. 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 36. AMENDATORY 18 O.S. 2011, 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 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 memberships or membership interests ~~of the members~~ of a nonstock corporation into shares or other securities of a stock corporation or memberships 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 memberships or membership interests, and if any shares of any such stock corporation or memberships 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 memberships 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 memberships or membership interests of any such

nonstock corporation are to receive in exchange for, or upon conversion of such shares or memberships 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 memberships 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 memberships or membership interests ~~of members~~ of a constituent nonstock corporation may be treated in various ways so as to convert such memberships or membership 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 memberships or 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~~ any type of memberships or membership interests, 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. 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.

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, and the reference therein to "shareholder" shall be deemed to include "member" hereunder.

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. The provisions of subsection D of Section 1081 of this title shall apply to a merger pursuant to the provisions of this section; provided, however, that for purposes of a constituent nonstock corporation, references to the board of directors, to shareholders, and to shares of a constituent corporation shall be deemed to be references to the governing body of the corporation, to members of

the corporation, and to memberships or membership interests, as applicable, respectively.

G. 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 37. AMENDATORY 18 O.S. 2011, Section 1087, is amended to read as follows:

Section 1087.

MERGER OR CONSOLIDATION OF DOMESTIC AND FOREIGN STOCK AND NONSTOCK CORPORATIONS

A. Any one or more corporations of this state, whether stock or nonstock corporations and whether or not organized for profit, 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, whether stock or nonstock corporations and whether or not organized for profit, if the laws under which the other corporation or corporations are formed shall 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 corporation formed by the consolidation,

which may be a corporation of the place 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. The surviving or new corporation may be either a stock corporation or a ~~membership~~ nonstock corporation, as shall be specified in the agreement of merger required by the provisions of subsection B of this section.

B. The method and procedure to be followed by the constituent corporations so merging or consolidating shall be as prescribed in Section ~~86~~ 1086 of this ~~act~~ title in the case of Oklahoma corporations. The agreement of merger or consolidation shall also set forth such other matters or provisions as shall then be required to be set forth in certificates of incorporation by the laws of the state which are stated in the agreement to be the laws which shall govern the surviving or resulting corporation and that can be stated in the case of a merger or consolidation. The agreement, in the case of foreign corporations, shall be adopted, approved, certified, executed and acknowledged by each of the constituent foreign corporations in accordance with the laws under which each is formed.

C. The requirements of the provisions of subsection D of Section ~~82~~ 1082 of this ~~act~~ title as to the appointment of the Secretary of State to receive process and the manner of serving the same in the event the surviving or new corporation is to be governed by the laws of any other state shall also apply to mergers or

consolidations effected pursuant to the provisions of this section. The provisions of subsection E of Section ~~81~~ 1081 of this ~~act~~ title shall apply to mergers effected pursuant to the provisions of this section if the surviving corporation is a corporation of this state. The provisions of subsection D of Section ~~81~~ 1081 of this ~~act~~ title shall apply to any constituent stock corporation participating in a merger of consolidation pursuant to the provisions of this section; provided, however, that for purposes of a constituent nonstock corporation, references to the board of directors, to shareholders, and to shares shall be deemed to be references to the governing body of the corporation, to members of the corporation, and to memberships or membership interests of the corporation, as applicable, respectively. The provisions of subsection F of Section ~~81~~ 1081 of this ~~act~~ title shall apply to any constituent stock corporation participating in a merger pursuant to the provisions of this section.

D. 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 38. AMENDATORY 18 O.S. 2011, Section 1090.2, is amended to read as follows:

Section 1090.2

MERGER OR CONSOLIDATION OF A

DOMESTIC CORPORATION AND ~~BUSINESS~~ AN 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~~ an 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~~ an 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, and including a limited liability partnership and a limited liability limited partnership, limited liability company, ~~business trust, common law trust, or other unincorporated business~~ and any unincorporated nonprofit or for-profit association, trust or enterprise having members or having outstanding shares of stock or other evidences of financial, beneficial or membership interest therein, whether formed by agreement or under statutory authority or otherwise.

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 or memberships or membership interests of each such corporation and the memberships, or membership, economic or ownership interests of each ~~business~~ entity into shares, memberships, or membership, economic or 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~~, memberships or interests ~~of any business entity~~

are not to remain outstanding, to be converted solely into shares, ~~ownership~~ memberships, 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, memberships, or ~~ownership~~ interests are to receive in exchange for, or upon conversion of, the shares, memberships 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~~ memberships, 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, membership 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~~ a membership or 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 or 1084 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~~ an entity, which states:

1. The name ~~and~~, jurisdiction of formation, and type of entity 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, which may be amended and restated, that are desired to be effected by the merger, which amendments or changes may amend and restate the certificate of incorporation of the surviving corporation in its entirety, 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~~ an 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~~ Section 2004 of Title 12 of the Oklahoma Statutes, 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~~,~~ and F ~~and G~~ of Section 1081 of this title, subsections C, D, E and F of Section 1084 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; provided, however, that for purposes of a nonstock corporation or entity, references to the board of directors shall be deemed to be references to the person or body having managerial responsibility for the corporation or entity, references to shareholders shall be deemed to be references to the members or owners of the corporation or entity, and references to shares shall be deemed to be references to memberships or membership, economic or ownership interests in the corporation or entity, as applicable.

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

SECTION 39. AMENDATORY 18 O.S. 2011, Section 1090.3, is amended to read as follows:

Section 1090.3

~~USINESS~~ 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 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 stock, but not the outstanding voting stock owned by the interested shareholder, those shares owned 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 owned 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, adopted an amendment to its bylaws 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, or

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 twenty percent (20%) or more of any class of voting stock ,

b. any trust or other estate in which the person has at least 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 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 40. AMENDATORY 18 O.S. 2011, Section 1090.4, is amended to read as follows:

Section 1090.4

CONVERSION OF A DOMESTIC ~~BUSINESS~~

ENTITY TO A DOMESTIC CORPORATION

A. As used in this section, the term "~~business~~ entity" means a domestic or foreign partnership, whether general or limited, and including a limited liability partnership and a limited liability limited partnership, limited liability company, ~~business trust, common law trust, or other unincorporated association~~ and any unincorporated nonprofit or for-profit association, trust or enterprise having members or having outstanding shares of stock or other evidences of financial, beneficial or membership interest therein, whether formed by agreement or under statutory authority or otherwise.

B. Any ~~business~~ entity may convert to a corporation incorporated under the laws of this state by complying with subsection G of this section and filing in the office of the Secretary of State a certificate of conversion that has been executed in accordance with subsection H of this section and filed

in accordance with Section 1007 of this title, to which shall be attached, a certificate of incorporation that has been prepared, executed and acknowledged in accordance with Section 1007 of this title. Each of the certificates required by this subsection shall be filed simultaneously in the office of the Secretary of State.

C. The certificate of conversion to a corporation shall state:

1. The date on which the ~~business~~ entity was first formed;

2. The name ~~and~~, jurisdiction of formation, and type of entity of the ~~business~~ entity when formed and, if changed, its name ~~and~~, jurisdiction and type of entity immediately before the filing of the certificate of conversion;

3. The name of the corporation as set forth in its certificate of incorporation 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 not later than ninety (90) days after the filing, of the conversion to a corporation if the conversion is not to be effective upon the filing of the certificate of conversion and the certificate of incorporation provides for the same future effective date as authorized in subsection D of Section 1007 of this title.

D. Upon the effective date or time of the certificate of conversion and the certificate of incorporation, the ~~business~~ entity shall be converted to a domestic corporation and the corporation shall thereafter be subject to all of the provisions of this title,

except that notwithstanding Section 1007 of this title, the existence of the corporation shall be deemed to have commenced on the date the ~~business~~ entity commenced its existence.

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

F. When ~~a business~~ an entity has converted to a domestic corporation under this section, the domestic corporation shall be deemed to be the same entity as the converting ~~business~~ entity. 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 remain vested in the domestic corporation to which the ~~business~~ entity has converted and shall be the property of the domestic corporation 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 the conversion; 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 remain attached to the domestic corporation to which the ~~business~~ entity has converted, and may be enforced against it to

the same extent as if said debts, liabilities and duties had originally been incurred or contracted by it in its capacity as a domestic corporation. The rights, privileges, powers and interests in property of the ~~business~~ entity, as well as the debts, liabilities and duties of the ~~business~~ entity, shall not be deemed, as a consequence of the conversion, to have been transferred to the domestic corporation to which the ~~business~~ entity has converted for any purpose of the laws of this state.

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 ~~business~~ entity and shall constitute a continuation of the existence of the converting ~~business~~ entity in the form of a domestic corporation.

H. Before filing a certificate of conversion 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 certificate of incorporation shall be approved by the same authorization required to approve the conversion.

I. The certificate of conversion to a corporation shall be signed by an officer, director, trustee, manager, partner, or other person performing functions equivalent to those of an officer or director of a domestic corporation, however named or described, and who is authorized to sign the certificate of conversion on behalf of the ~~business~~ entity.

J. In a conversion of ~~a business~~ an entity to a domestic corporation under this section, rights or securities of, or memberships or membership, economic or ownership interests in, the ~~business~~ entity which is to be converted to a domestic corporation may be exchanged for or converted into cash, property, or shares of stock, rights or securities of the domestic corporation or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, or shares of stock, rights or securities of or interests in another domestic corporation or ~~business~~ entity or may be canceled.

SECTION 41. AMENDATORY 18 O.S. 2011, Section 1090.5, is amended to read as follows:

Section 1090.5

CONVERSION OF DOMESTIC CORPORATION

TO ~~A BUSINESS~~ AN ENTITY

A. A domestic corporation may, upon the authorization of such conversion in accordance with this section, convert to ~~a business~~ an entity. As used in this section, the term "~~business~~ entity" means a

domestic or foreign partnership, whether general or limited, and including a limited liability partnership and a limited liability limited partnership, limited liability company, ~~business trust, common law trust, or other unincorporated association~~ and any unincorporated nonprofit or for-profit association, trust or enterprise having members or having outstanding shares of stock or other evidences of financial, beneficial or membership interest therein, whether formed by agreement or under statutory authority or otherwise.

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. The corporation adopts the conversion if all outstanding shares of stock of the corporation, whether voting or nonvoting, are voted for the resolution.

C. If the governing act of the domestic ~~business~~ entity to which the corporation is converting does not provide for the filing of a conversion notice with the Secretary of State or the corporation is converting to a foreign ~~business~~ entity, 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 to which the corporation shall be converted ~~and~~, its jurisdiction of formation~~,~~ if a foreign ~~business~~ entity, and the type of entity;

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

5. The future effective date or time of the conversion to ~~a business~~ an entity, which shall be a date or time certain not later than ninety (90) days after the filing, if it is not to be effective upon the filing of the certificate of conversion;

6. The agreement of the foreign ~~business~~ entity that it may be served with process in this state in any action, suit or proceeding for enforcement of any obligation of the foreign ~~business~~ entity arising while it was a domestic corporation and that it irrevocably

appoints the Secretary of State as its agent to accept service of process in any such action, suit or proceeding~~, and its~~;

7. The address to which a copy of the process referred to in this subsection shall be mailed to it by the Secretary of State. In the event of such service upon the Secretary of State in accordance with the provisions of Section 2004 of Title 12 of the Oklahoma Statutes, the Secretary of State shall immediately notify such corporation that has converted out of the State of Oklahoma by letter, certified mail, return receipt requested, directed to the corporation at the address specified unless the 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; and

~~7.~~ 8. If the ~~business~~ entity to which the corporation is converting was required to make a filing with the Secretary of State as a condition of its formation, the type and date of such filing.

D. Upon the filing of a conversion notice with the Secretary of State, whether under subsection C of this section or under the governing act of the domestic ~~business~~ entity to which the corporation is converting, the filing of any formation document required by the governing act of the domestic ~~business~~ entity to which the corporation is converting, and payment to the Secretary of State of all prescribed fees, the Secretary of State shall certify that the corporation has filed all documents and paid all required fees, 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.

E. The conversion of a corporation under this section and the resulting cessation of its existence as a domestic corporation shall

not be deemed to affect any obligations or liabilities of the corporation incurred before such conversion or the personal liability of any person incurred before the conversion, nor shall it be deemed to affect the choice of law applicable to the corporation with respect to matters arising before the conversion.

F. 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.

G. In a conversion of a domestic corporation to ~~a business~~ an entity under this section, shares of stock of the converting domestic corporation may be exchanged for or converted into cash, property, rights or securities of, or memberships or membership, economic or ownership interests in, the ~~business~~ entity to which the domestic corporation is being converted or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, shares of stock, rights or securities of, or interests in, another corporation or ~~business~~ entity or may be canceled.

H. When a corporation has converted to ~~a business~~ an entity under this section, the ~~business~~ entity shall be deemed to be the same entity as the corporation. All of the rights, privileges and powers of the corporation that has converted, and all property, real, personal and mixed, and all debts due to the corporation, as

well as all other things and causes of action belonging to the corporation, shall remain vested in the ~~business~~ entity to which the corporation has converted and shall be the property of the ~~business~~ entity, and the title to any real property vested by deed or otherwise in the corporation shall not revert or be in any way impaired by reason of the conversion; but all rights of creditors and all liens upon any property of the corporation shall be preserved unimpaired, and all debts, liabilities and duties of the corporation that has converted shall remain attached to the ~~business~~ entity to which the corporation has converted, and may be enforced against it to the same extent as if said debts, liabilities and duties had originally been incurred or contracted by it in its capacity as the ~~business~~ entity. The rights, privileges, powers and interest in property of the corporation that has converted, as well as the debts, liabilities and duties of the corporation, shall not be deemed, as a consequence of the conversion, to have been transferred to the ~~business~~ entity to which the corporation has converted for any purpose of the laws of this state.

I. No vote of shareholders of a corporation shall be necessary to authorize a conversion if no shares of the stock of the corporation shall have been issued before the adoption by the board of directors of the resolution approving the conversion.

J. Nothing in this section shall be deemed to authorize the conversion of a charitable nonstock corporation into another entity,

if the charitable status of such charitable nonstock corporation would thereby be lost or impaired.

SECTION 42. AMENDATORY 18 O.S. 2011, 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 Section 1082, 1084, 1085, 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 Section 1081, 1082, 1084, 1085, 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 <u>or Section 33 of this act</u> 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~~ who was such on the record date for notice of such meeting, or such members who received notice in accordance with subsection C of Section 1084 of this title, with respect to shares for which appraisal rights are available pursuant to subsection B or C of this section 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 and, if one of the constituent corporations is a nonstock corporation, a copy of Section 1 of this act. 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 <u>or Section 33 of this act</u>, 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 and, if one of the constituent corporations is a nonstock corporation, a copy of Section 1 of this act. 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 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~~. Notwithstanding the foregoing, at any time within sixty (60) days after the effective date of the merger or consolidation, any shareholder who has not commenced an appraisal proceeding or joined that proceeding as a named party 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. Notwithstanding subsection A of this section, a person who is the beneficial owner of shares of such stock held either in a voting trust or by a

nominee on behalf of such person may, in such person's own name, file a petition or request from the corporation the statement described in this section.

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~~. Unless the court in its discretion determines otherwise for good cause shown, interest from the effective date of the merger through the date of payment of the judgment shall be compounded quarterly and shall accrue at five percent (5%) over the Federal Reserve discount rate, including any surcharge, as

established from time to time during the period between the effective date of the merger and the date of payment of judgment. 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; provided, however, that this provision shall not affect the right of any shareholder who has not commenced an appraisal proceeding or joined that proceeding as a named party to withdraw such shareholder's demand for appraisal and to accept the terms offered upon the merger or consolidation within sixty (60) days after the effective date of the merger or consolidation, as set forth in subsection E of this section.

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 43. AMENDATORY 18 O.S. 2011, Section 1092, is amended to read as follows:

Section 1092.

SALE, LEASE OR EXCHANGE OF ASSETS; CONSIDERATION; PROCEDURE

A. Every corporation, at any meeting of its board of directors or governing body, may sell, lease, or exchange all or substantially all of its property and assets, including its goodwill and its

corporate franchises, upon such terms and conditions and for such consideration, which may consist in whole or in part of money or other property, including shares of stock in, and/or other securities of, any other corporation or corporations, as its board of directors or governing body deems expedient and for the best interests of the corporation, when and as authorized by a resolution adopted by the holders of a majority of the outstanding stock of the corporation entitled to vote thereon or, if the corporation is a nonstock corporation, by a majority of the members having the right to vote for the election of the members of the governing body <u>and any other members entitled to vote thereon under the certificate of incorporation or the bylaws of such corporation</u>, at a meeting duly called upon at least twenty (20) days' notice. The notice of the meeting shall state that such a resolution will be considered.

B. Notwithstanding authorization or consent to a proposed sale, lease or exchange of a corporation's property and assets by the shareholders or members, the board of directors or governing body may abandon such proposed sale, lease or exchange without further action by the shareholders or members, subject to the rights, if any, of third parties under any contract relating thereto.

C. For purposes of this section only, the property and assets of the corporation include the property and assets of any subsidiary of the corporation. As used in this subsection, "subsidiary" means any entity wholly owned and controlled, directly or indirectly, by

the corporation and includes, without limitation, corporations, partnerships, limited partnerships, limited liability partnerships, limited liability companies, and statutory trusts. Notwithstanding subsection A of this section, except to the extent the certificate of incorporation otherwise provides, no resolution by shareholders or members shall be required for a sale, lease or exchange of property and assets of the corporation to a subsidiary.

SECTION 44. AMENDATORY 18 O.S. 2011, Section 1095, is amended to read as follows:

Section 1095.

DISSOLUTION BEFORE THE ISSUANCE OF

SHARES OR BEGINNING BUSINESS; PROCEDURE

If a corporation has not issued shares or has not commenced the business for which the corporation was organized, a majority of the incorporators, or, if directors were named in the certificate of incorporation or have been elected, a majority of the directors, may surrender all of the corporation's rights and franchises by filing in the Office of the Secretary of State a certificate, executed and acknowledged by a majority of the incorporators or directors, stating ~~that~~:

1. That no shares of stock have been issued or that the business of activity for which the corporation was organized has not begun; ~~that~~

2. The date of filing of the corporation's original certificate of incorporation with the Secretary of State;

3. That no part of the capital of the corporation has been paid, or, if some capital has been paid, that the amount actually paid in for the corporation's shares, less any part thereof disbursed for necessary expenses, has been returned to those entitled thereto; ~~that~~

4. That if the corporation has begun business but it has not issued shares, all debts of the corporation have been paid; ~~that~~

5. That if the corporation has not begun business but has issued stock certificates all issued stock certificates, if any, have been surrendered and canceled; and ~~that~~

6. That all rights and franchises of the corporation are surrendered. Upon such certificate becoming effective in accordance with the provisions of Section 1007 of this title, the corporation shall be dissolved.

SECTION 45. AMENDATORY 18 O.S. 2011, Section 1096, is amended to read as follows:

Section 1096.

DISSOLUTION; PROCEDURE

A. If it should be deemed advisable in the judgment of the board of directors of any corporation that it should be dissolved, the board, after the adoption of a resolution to that effect by a majority of the whole board at any meeting called for that purpose,

shall cause notice to be mailed to each shareholder entitled to vote thereon as of the record date for determining the shareholders entitled to notice of the meeting of the adoption of the resolution and of a meeting of shareholders to take action upon the resolution.

B. At the meeting a vote shall be taken upon the proposed dissolution. If a majority of the outstanding stock of the corporation entitled to vote thereon shall vote for the proposed dissolution, a certificate of dissolution shall be filed with the Secretary of State pursuant to subsection D of this section.

C. Dissolution of a corporation may also be authorized without action of the directors if all the shareholders entitled to vote thereon shall consent in writing and a certificate of dissolution shall be filed with the Secretary of State pursuant to subsection D of this section.

D. If dissolution is authorized in accordance with this section, a certificate of dissolution shall be executed, acknowledged and filed, and shall become effective, in accordance with Section 1007 of this title. Such certificate of dissolution shall set forth:

1. The name of the corporation;

2. The date dissolution was authorized;

3. That the dissolution has been authorized by the board of directors and shareholders of the corporation, in accordance with subsections A and B of this section, or that the dissolution has

been authorized by all of the shareholders of the corporation entitled to vote on a dissolution, in accordance with subsection C of this section; ~~and~~

4. The names and addresses of the directors and officers of the corporation; and

5. The date of filing of the corporation's original certificate of incorporation with the Secretary of State.

E. The resolution authorizing a proposed dissolution may provide that notwithstanding authorization or consent to the proposed dissolution by the shareholders, or the members of a nonstock corporation pursuant to Section 1097 of this title, the board of directors or governing body may abandon such proposed dissolution without further action by the shareholders or members.

F. Upon a certificate of dissolution becoming effective in accordance with Section 1007 of this title, the corporation shall be dissolved.

SECTION 46. AMENDATORY 18 O.S. 2011, Section 1097, is amended to read as follows:

Section 1097.

DISSOLUTION OF NONSTOCK CORPORATION; PROCEDURE

A. Whenever it shall be desired to dissolve any corporation having no capital stock, the governing body shall perform all the acts necessary for dissolution which are required by the provisions of Section 1096 of this title to be performed by the board of

directors of a corporation having capital stock. If the members of a corporation having no capital stock are entitled to vote for the election of members of its governing body or are entitled to vote for dissolution under the certificate of incorporation or the bylaws of such corporation, they shall perform all the acts necessary for dissolution which are required by the provisions of Section 1096 of this title to be performed by the shareholders of a corporation having capital stock, including dissolution without action of the members of the governing body if all the members of the corporation entitled to vote thereon shall consent in writing and a certificate of dissolution shall be filed with the Secretary of State pursuant to subsection D of Section 1096 of this title. If there is no member entitled to vote thereon, the dissolution of the corporation shall be authorized at a meeting of the governing body, upon the adoption of a resolution to dissolve by the vote of a majority of members of its governing body then in office. ~~In the event of the dissolution of a not for profit corporation, a notice of dissolution shall be published one (1) time in a newspaper having general circulation in the county in which the principal place of business of such corporation is located.~~ In all other respects, the method and proceedings for the dissolution of a corporation having no capital stock shall conform as nearly as may be to the proceedings prescribed by the provisions of Section 1096 of this title for the dissolution of corporations having capital stock.

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

SECTION 47. AMENDATORY 18 O.S. 2011, Section 1099, is amended to read as follows:

Section 1099.

CONTINUATION OF CORPORATION AFTER DISSOLUTION FOR PURPOSES OF SUIT AND WINDING UP AFFAIRS

All corporations, whether they expire by their own limitation or are otherwise dissolved, nevertheless shall be continued, for the term of three (3) years from such expiration or dissolution or for such longer period as the district court shall in its discretion direct, bodies corporate for the purpose of prosecuting and defending suits, whether civil, criminal or administrative, by or against them, and of enabling them gradually to settle and close their business, to dispose of and convey their property, to discharge their liabilities, and to distribute to their shareholders any remaining assets, but not for the purpose of continuing the business for which the corporation was organized. With respect to

any action, suit, or proceeding begun by or against the corporation either prior to or within three (3) years after the date of its expiration or dissolution, the action shall not abate by reason of the expiration or dissolution of the corporation. The corporation, solely for the purpose of such action, suit or proceeding, shall be continued as a body corporate beyond the three-year period and until any judgments, orders or decrees therein shall be fully executed, without the necessity for any special direction to that effect by the district court. Sections 1100 through 1100.3 of this title shall apply to any corporation that has expired by its own limitation, and when so applied, all references in those sections to a dissolved corporation or dissolution shall include a corporation that has expired by its own limitation and to such expiration respectively.

SECTION 48. AMENDATORY 18 O.S. 2011, Section 1100.1, is amended to read as follows:

Section 1100.1

NOTICE TO CLAIMANTS; FILING OF CLAIMS

A. 1. After a corporation has been dissolved in accordance with the procedures set forth in the Oklahoma General Corporation Act, the corporation or any successor entity may give notice of the dissolution requiring all persons having a claim against the corporation other than a claim against the corporation in a pending action, suit, or proceeding to which the corporation is a party to

present their claims against the corporation in accordance with the notice. The notice shall state:

a. that all such claims must be presented in writing and must contain sufficient information reasonably to inform the corporation or successor entity of the identity of the claimant and the substance of the claim,

b. the mailing address to which a claim must be sent,

c. the date by which a claim must be received by the corporation or successor entity, which date shall be no earlier than sixty (60) days from the date of the notice,

d. that the claim will be barred if not received by the date referred to in subparagraph c of this paragraph,

e. that the corporation or a successor entity may make distributions to other claimants and the corporation's shareholders or persons interested as having been such without further notice to the claimant, and

f. the aggregate amount, on an annual basis, of all distributions made by the corporation to its shareholders for each of the three (3) years prior to the date the corporation dissolved.

2. The notice shall also be published at least once a week for two (2) consecutive weeks in a newspaper of general circulation in

the county in which the office of the corporation's last registered agent in this state is located and in the corporation's principal place of business and, in the case of a corporation having Ten Million Dollars ($10,000,000.00) or more in total assets at the time of its dissolution, at least once in an Oklahoma newspaper having a circulation of at least two hundred fifty thousand (250,000). On or before the date of the first publication of the notice, the corporation or successor entity shall mail a copy of the notice by certified or registered mail, return receipt requested, to each known claimant of the corporation, including persons with claims asserted against the corporation in a pending action, suit, or proceeding to which the corporation is a party.

3. Any claim against the corporation required to be presented pursuant to this subsection is barred if a claimant who was given actual notice under this subsection does not present the claim to the dissolved corporation or successor entity by the date referred to in subparagraph c of paragraph 1 of this subsection.

4. A corporation or successor entity may reject, in whole or in part, any claim made by a claimant pursuant to this subsection by mailing notice of rejection by certified or registered mail return receipt requested to the claimant within ninety (90) days after receipt of the claim and, in all events, at least one hundred fifty (150) days before the expiration of the period described in Section 1099 of ~~Title 18 of the Oklahoma Statutes~~ this title; provided,

however, that in the case of a claim filed pursuant to Section 1110 of this title against a corporation or successor entity for which a receiver or trustee has been appointed by the district court, the time period shall be as provided in Section 1111 of this title, and the thirty-day appeal period provided for in Section 1111 of this title shall be applicable. A notice sent by a corporation or successor entity pursuant to this subsection shall state that any claim rejected will be barred if an action, suit, or proceeding with respect to the claim is not commenced within one hundred twenty (120) days of the date thereof, and shall be accompanied by a copy of Sections 1099 through 1100.3 of this title, and, in the case of a notice sent by a court-appointed receiver or trustee for a claim filed pursuant to Section 1110 of this title, the notice shall be accompanied by copies of Sections 1110 and 1111 of this title.

5. A claim against a corporation is barred if a claimant whose claim is rejected pursuant to paragraph 4 of this subsection does not commence an action, suit, or proceeding with respect to the claim within one hundred twenty (120) days after the mailing of the rejection notice.

B. 1. A corporation or successor entity electing to follow the procedures described in subsection A of this section shall also give notice of the dissolution of the corporation to persons with contractual claims contingent upon the occurrence or nonoccurrence of future events or otherwise conditional or unmatured, and request

that those persons present their claims in accordance with the terms of the notice. As used in this section and Section 1100.2 of this title, the term "contractual claims" shall not include any implied warranty as to any product manufactured, sold, distributed, or handled by the dissolved corporation. The notice shall be in substantially the form, and sent and published in the same manner, as described in paragraph 1 of subsection A of this section.

2. The corporation or successor entity shall offer any claimant on a contract whose claim is contingent, conditional, or unmatured, the security that the corporation or successor entity determines is sufficient to provide compensation to the claimant if the claim matures. The corporation or successor entity shall mail the offer to the claimant by certified or registered mail, return receipt requested, within ninety (90) days of receipt of the claim and, in all events, at least one hundred fifty (150) days before the expiration of the period described in Section 1099 of this title. If the claimant offered the security does not deliver in writing to the corporation or successor entity a notice rejecting the offer within one hundred twenty (120) days after receipt of the offer for security, the claimant shall be deemed to have accepted the security as the sole source from which to satisfy his or her claim against the corporation.

C. 1. A corporation or successor entity which has given notice in accordance with subsection A of this section shall petition the

district court to determine the amount and form of security that will be reasonable likely to be sufficient to provide compensation for any claim against the corporation which is the subject of a pending action, suit, or proceeding to which the corporation is a party other than a claim barred pursuant to subsection A of this section.

2. A corporation or successor entity which has given notice in accordance with subsections A and B of this section shall petition the district court to determine the amount and form of security that will be sufficient to provide compensation to any claimant who has rejected the offer for security made pursuant to paragraph 2 of subsection B of this section.

3. A corporation or successor entity which has given notice in accordance with subsection A of this section shall petition the district court to determine the amount and form of security which will be reasonably likely to be sufficient to provide compensation for claims that have not been made known to the corporation or that have not arisen but that, based on facts known to the corporation or successor entity, are likely to arise or to become known to the corporation or successor entity within five (5) years after the date of dissolution or a longer period of time as the district court may determine not to exceed ten (10) years after the date of dissolution. The district court may appoint a guardian ad litem in respect of any such proceeding brought under this subsection. The

reasonable fees and expenses of the guardian, including all reasonable expert witness fees, shall be paid by the petitioner in the proceeding.

D. The giving of any notice or making of any offer pursuant to the provisions of this section shall not revive any claim then barred or constitute acknowledgment by the corporation or successor entity that any person to whom the notice is sent is a proper claimant and shall not operate as a waiver of any defense or counterclaim in respect of any claim asserted by any person to whom the notice is sent.

E. As used in this section, the term "successor entity" shall include any trust, receivership, or other legal entity governed by the laws of this state to which the remaining assets and liabilities of a dissolved corporation are transferred and which exists solely for the purposes of prosecuting and defending suits, by or against the dissolved corporation, enabling the dissolved corporation to settle and close the business of the dissolved corporation, to dispose of and convey the property of the dissolved corporation, to discharge the liabilities of the dissolved corporation, and to distribute to the dissolved corporation's shareholders any remaining assets, but not for the purpose of continuing the business for which the dissolved corporation was organized.

F. In the case of a nonstock corporation, any notice referred to in the last sentence of paragraph 4 of subsection A of this

section shall include a copy of Section 1 of this act. In the case of a nonprofit nonstock corporation, provisions of this section regarding distributions to members shall not apply to the extent that those provisions conflict with any other applicable law or with that corporation's certificate of incorporation or bylaws.

SECTION 49. AMENDATORY 18 O.S. 2011, Section 1100.2, is amended to read as follows:

Section 1100.2

PAYMENT AND DISTRIBUTION TO CLAIMANTS AND SHAREHOLDERS

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

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

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

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

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

2. Claims or obligations shall be paid in full and any provision for payment shall be made in full if there are sufficient assets. If there are insufficient assets, the claims and obligations shall be paid or provided for according to their priority, and, among claims of equal priority, ratably to the extent of assets legally available therefor. Any remaining assets shall be distributed to the shareholders of the dissolved corporation; provided, however, that distribution shall not be made before the expiration of one hundred fifty (150) days from the date of the last notice of rejections given pursuant to paragraph 3 of subsection A of Section 1100.1 of this title. In the absence of actual fraud, the judgment of the directors of the dissolved corporation or the governing persons of the successor entity as to the provision made for the payment of all obligations under subparagraph d of paragraph ~~4~~ 1 of this subsection shall be conclusive.

B. A dissolved corporation or successor entity which has not followed the procedures described in Section 1100.1 of this title shall, prior to the expiration of the period described in Section 1099 of this title, adopt a plan of distribution pursuant to which the dissolved corporation or successor entity:

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

2. Shall make provision as will be reasonably likely to be sufficient to provide compensation for any claim against the corporation which is the subject of a pending action, suit, or proceeding to which the corporation is a party; and

3. Shall make provision as will be reasonably likely to be sufficient to provide compensation for claims that have not been made known to the corporation or successor entity or that have not arisen but that, based on facts known to the corporation or successor entity, are likely to arise or to become known to the corporation or successor entity within ten (10) years after the date of dissolution. The plan of distribution shall provide that the claims shall be paid in full and any provision for payment made shall be made in full if there are sufficient assets. If there are insufficient assets, the plan shall provide that the claims and obligations shall be paid or provided for according to their priority and, among claims of equal priority, ratably to the extent of assets legally available therefor. Any remaining assets shall be distributed to the shareholders of the dissolved corporation.

C. Directors of a dissolved corporation or governing persons of a successor entity which has complied with subsection A or B of this section shall not be personally liable to the claimants of the dissolved corporation.

D. As used in this section, the term "successor entity" has the meaning set forth in subsection E of Section 1100.1 of this title.

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

F. In the case of a nonprofit nonstock corporation, provisions of this section regarding distributions to members shall not apply to the extent that those provisions conflict with any other applicable law or with that corporation's certificate of incorporation or bylaws.

SECTION 50. AMENDATORY 18 O.S. 2011, 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 1096 of this 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 1099 of this 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;

3. Notice of the special meeting of shareholders shall be given in accordance with the provisions of Section 1067 of this title to each of the shareholders; and

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 1007 of this title which shall state:

a. the name of the corporation;

b. the address of the corporation's registered office in this state, which shall be stated in accordance with subsection C of Section 1021 of this title, and the name of its registered agent at such address;

c. the names and respective addresses of its officers;

~~c.~~ d. the names and respective addresses of its directors; and

~~d.~~ e. 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 1073 of this 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.

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

F. At any time prior to the expiration of three (3) years following the dissolution of a nonstock corporation pursuant to Section 1097 of this title, or at any time prior to the expiration of such longer period as the district court may have directed pursuant to Section 1099 of this title, a nonstock corporation may revoke the dissolution theretofore effected by it in a manner analogous to that by which the dissolution was authorized, including:

1. If applicable, a vote of the members entitled to vote, if any, on the dissolution; and

2. The filing of a certificate of revocation of dissolution containing information comparable to that required by paragraph 4 of subsection A of this section.

Notwithstanding the foregoing, only this subsection and subsections B, D and E of this section shall apply to nonstock corporations.

SECTION 51. AMENDATORY 18 O.S. 2011, 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 1007 of this 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, which shall be stated in accordance with subsection C of Section 1021 of this title, 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 1007 of this 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 1067 of this title.

I. After a renewal or revival of the certificate of incorporation of the corporation shall have been effected, 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 nonstock 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~~ In addition, the members of any nonstock corporation ~~not for profit and having no capital stock~~ who are entitled to vote for the election of members of its governing body and any other members entitled to vote for dissolution under the certificate of incorporation or the bylaws

of such corporation, 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 nonstock 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; provided, however, subsection I of this section shall not apply to nonstock corporations.

SECTION 52. AMENDATORY 18 O.S. 2011, Section 1130, is amended to read as follows:

Section 1130.

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

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

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

1. A certificate as of a date not earlier than six (6) months prior to the filing date issued by an authorized officer of the jurisdiction of its incorporation evidencing its corporate existence. If such certificate is in a foreign language, a translation thereof, under oath of the translator, shall be attached thereto;

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

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

b. the name and street address of its additional registered agent in this state, if any, which agent ~~shall be either~~ may be the foreign corporation itself, an individual resident in this state ~~when appointed or another~~, a domestic corporation, a domestic partnership whether general or limited and including a limited liability partnership or a limited liability limited partnership, a domestic limited liability company, ~~or limited partnership~~ a domestic statutory trust, a foreign corporation other than the foreign corporation itself, a foreign partnership whether general or limited and including a limited liability partnership or a limited liability limited

partnership, a foreign limited liability company or a foreign statutory trust, if authorized to transact business in this state,

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

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

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

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

C. The Secretary of State, upon payment to the Secretary of State of the fees prescribed in Section 1142 of this title, shall issue a sufficient number of certificates under the hand and

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

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

SECTION 53. AMENDATORY 18 O.S. 2011, Section 1133, is amended to read as follows:

Section 1133.

CHANGE OF REGISTERED AGENT UPON WHOM PROCESS MAY BE SERVED

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

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

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

2. ~~The~~ Such registered agent shall ~~be either an individual residing in this state when appointed or a corporation, limited liability company, or limited partnership authorized to transact business in this state~~ comply with subparagraph b of paragraph 2 of subsection B of Section 1130 of this title.

B. Any individual or ~~corporation~~ entity designated by a foreign corporation as its registered agent for service of process may resign by filing with the Secretary of State a signed statement that the agent is unwilling to continue to act as the registered agent of the corporation for service of process, including in the statement the post office address of the main or headquarters office of the foreign corporation, but the resignation shall not become effective until thirty (30) days after the statement is filed. The statement shall be acknowledged by the registered agent and shall contain a

representation that written notice of resignation was given to the corporation at least thirty (30) days prior to the filing of the statement by mailing or delivering the notice to the corporation at its address given in the statement.

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

D. Any individual~~, corporation, limited liability company or limited partnership~~ or entity designated by a foreign corporation as its registered agent for service of process may change the address of the registered office of the corporation or corporations for which he or she is the registered agent to another address in this state by filing with the Secretary of State a certificate in the name of each affected corporation, executed and acknowledged by the registered agent, setting forth the address at which the registered agent has maintained the registered office, and further certifying to the new address to which the registered office will be changed on a given day, and at which new address the registered agent will

thereafter maintain the registered office. Thereafter, or until further change of address, as authorized by law, the registered office in this state shall be located at the new address of the registered agent thereof as given in the certificate.

E. In the event of a change of name of any individual or ~~corporation~~ entity designated by a foreign corporation as its registered agent for service of process, the registered agent shall file with the Secretary of State a certificate in the name of each affected corporation, executed and acknowledged by the registered agent, setting forth the new name of the registered agent, the name of the registered agent before it was changed, and the address at which the registered agent has maintained the registered office for the affected corporation. A change of name of any person or ~~corporation~~ entity acting as registered agent as a result of a merger or consolidation of the registered agent, with or into another person or corporation which succeeds to its assets by operation of law, shall be deemed a change of name for purposes of this section.

SECTION 54. AMENDATORY 18 O.S. 2011, Section 1135, is amended to read as follows:

Section 1135.

WITHDRAWAL OF FOREIGN CORPORATION FROM STATE; PROCEDURE; SERVICE OF PROCESS ON SECRETARY OF STATE

A. Any foreign corporation which shall have qualified to do business in this state pursuant to the provisions of Section 1130 of this title, may surrender its authority to do business in this state and may withdraw ~~therefrom~~ by filing with the Secretary of State:

1. A certificate, executed by an authorized officer of the corporation and acknowledged in accordance with the provisions of Section 1007 of this title, stating that it surrenders its authority to transact business in Oklahoma and withdraws ~~therefrom~~; and stating the address to which the Secretary of State may mail any process against the corporation that may be served upon the Secretary of State; or

2. ~~A copy of a certificate of dissolution issued by the proper official of the state or other jurisdiction of its incorporation, together with a certificate, which shall be executed in accordance with the provisions of paragraph 1 of this subsection, stating the address to which the Secretary of State may mail any process against the corporation that may be served upon the Secretary of State; or~~

~~3.~~ A copy of an order or decree of dissolution made by any court of competent jurisdiction or other competent authority of the state or other jurisdiction of its incorporation, certified to be a true copy under the hand of the clerk of the court or other official body, and the official seal of the court or official body or clerk thereof, together with a certificate executed in accordance with the provisions of paragraph 1 of this subsection, stating the address to

which the Secretary of State may mail any process against the corporation that may be served upon the Secretary of State.

B. The Secretary of State, upon payment to the Secretary of State of the fees prescribed in Section 1142 of this title, shall issue a sufficient number of certificates, under the hand and official seal of the Secretary of State, evidencing the surrender of the authority of the corporation to do business in this state and its withdrawal therefrom.

C. Upon the issuance of the certificates by the Secretary of State, the appointment of the registered agent of the corporation in this state, upon whom process against the corporation may be served, shall be revoked, and service on the corporation may be made by serving the Secretary of State as its agent as provided in Section 2004 of Title 12 of the Oklahoma Statutes.

D. In the event of service upon the Secretary of State in accordance with the provisions of Section 2004 of Title 12 of the Oklahoma Statutes, the Secretary of State shall immediately notify the corporation by letter, certified mail, return receipt requested, at the address stated in the certificate which was filed by the corporation with the Secretary of State pursuant to subsection A of this section. The letter 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 names 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.

SECTION 55. AMENDATORY 18 O.S. 2011, Section 2001, is amended to read as follows:

Section 2001.

DEFINITIONS

As used in this act, unless the context otherwise requires:

1. "Articles of organization" means documents filed ~~under Section 2019 of this title~~ for the purpose of forming a limited liability company, and the articles as amended;

2. "Bankrupt" means bankrupt under the United States Bankruptcy Code, as amended, or insolvent under any state insolvency act;

3. "Business" means any trade, occupation, profession or other activity regardless of whether engaged in for gain, profit or livelihood;

4. "Capital contribution" means anything of value that a person contributes to the limited liability company as a prerequisite for, or in connection with, membership, including cash, property, services rendered, or a promissory note or other binding obligation to contribute cash or property or to perform services;

5. "Capital interest" means ~~the fair market value as of the date contributed of a member's capital contribution as adjusted for any additional capital contributions or withdrawals~~ a person's share of the profits and losses of a limited liability company and a person's right to receive distributions of the limited liability company's assets;

6. "Corporation" means a corporation formed under the laws of this state or a foreign corporation as defined in this section;

7. "Court" includes every court and judge having jurisdiction in the case;

8. "Foreign corporation" means a corporation formed under the laws of any state other than this state, or under the laws of the District of Columbia or any foreign country;

9. "Foreign limited liability company" means ~~an entity that is:~~

~~a. an unincorporated association,~~

~~b. organized under the laws of a state other than the laws of this state or organized under the laws of any foreign country,~~

~~c. organized under a statute pursuant to which an association may be formed that affords to each of its members limited liability with respect to the liabilities of the entity, and~~

~~d. not required to be registered or organized under any statute of this state other than this act~~ a limited liability company formed under the laws of any state other than this state, or under the laws of the District of Columbia or any foreign country;

10. "Foreign limited partnership" means a limited partnership formed under the laws of any state other than this state, or under the laws of the District of Columbia or any foreign country;

11. "Limited liability company" or "domestic limited liability company" means an entity ~~that is an unincorporated association or proprietorship having one or more members that is organized~~ formed under the Oklahoma Limited Liability Company Act and existing under the laws of this state;

12. "Limited partnership" means a limited partnership formed under the laws of this state or a foreign limited partnership as defined in this section;

13. "Manager" or "managers" means a person or persons designated by the members of a limited liability company to manage the limited liability company as provided in the articles of organization or an operating agreement;

14. "Member" means a person with an ownership interest in a limited liability company, with the rights and obligations specified under this act;

15. "Membership interest" ~~or "interest"~~ means a member's rights in the limited liability company, collectively, including the member's ~~share of the profits and losses of the limited liability company, the right to receive distributions of the limited liability company's assets, and~~ capital interest, any right to vote or participate in management, and such other rights accorded to members under the articles of organization, operating agreement, or the Oklahoma Limited Liability Company Act;

16. "Operating agreement", regardless of whether referred to as an operating agreement and whether oral, in a record, implied, or in any combination thereof, means any agreement of the members, including a sole member, as to the affairs of a limited liability company and the conduct of its business, including the agreement as amended or restated;

17. "Person" means an individual, a general partnership, a limited partnership, a limited liability company, a trust, an

estate, an association, a corporation or any other legal or commercial entity; ~~and~~

18. "State" means a state, territory or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico; and

19. "Charitable entity" means any nonprofit limited liability company or other entity that is exempt from taxation under Section 501(c)(3) of the United States Internal Revenue Code (26 U.S.C., Section 501(c)(3)), or any successor provisions.

SECTION 56. AMENDATORY 18 O.S. 2011, Section 2012.2, is amended to read as follows:

Section 2012.2

OPERATING AGREEMENT OF LLC

A. The operating agreement of the limited liability company governs generally:

1. Relations among the members as members and between the members and the limited liability company;

2. The rights and duties under this act of a person in the capacity of manager;

3. The activities of the company and the conduct of those activities; and

4. The means and conditions for amending the operating agreement.

If the operating agreement does not otherwise provide, this act governs the matter. The operating agreement may not vary the rights, privileges, duties and obligations imposed specifically under this act.

B. A limited liability company is bound by its operating agreement regardless of whether it executes the operating agreement. A member or manager of a limited liability company or an assignee of a ~~membership~~ capital interest is bound by the operating agreement regardless of whether the member, manager or assignee executes the operating agreement.

C. An operating agreement of a limited liability company having only one member is not unenforceable because there is only one person who is a party to the operating agreement.

D. The obligations of a limited liability company and its members to an assignee or dissociated member are governed by the operating agreement. Subject only to any court order to effectuate a charging order, an amendment to the operating agreement made after a person becomes an assignee or dissociated member is effective with regard to any debt, obligation, or other liability of the limited liability company or its members to the assignee or dissociated member.

SECTION 57. AMENDATORY 18 O.S. 2011, Section 2015, is amended to read as follows:

Section 2015.

MANAGEMENT OF COMPANY WITHOUT DESIGNATED MANAGERS; RESIGNATION OF MEMBER

A. The articles of organization or operating agreement may provide that the business of the limited liability company shall be managed without designated managers. So long as such provision continues in effect:

1. The members shall be deemed to be managers for purposes of applying provisions of this act, unless the context clearly requires otherwise;

2. The members shall have and be subject to all duties and liabilities of managers; and

3. A member signing on behalf of the limited liability company shall sign as a manager.

B. A member of a member-managed limited liability company may resign ~~as a member~~ from the member's management duties in accordance with the operating agreement or, if the operating agreement does not provide for the member's resignation, upon notice to the limited liability company. ~~When~~ Unless otherwise provided in the operating agreement, when a member of a member-managed limited liability company resigns, the member shall cease to have the rights and duties of a member and shall become an assignee; provided that the profits and losses of the limited liability company shall continue to be allocated to the member and any binding commitments for contributions shall continue as if the member had not resigned. If

the resignation violates the operating agreement, in addition to any remedies otherwise available under applicable law, a limited liability company may recover from the resigning member damages for breach of the operating agreement and damages for a prohibited withdrawal under either the operating agreement or Section 2036 of this title and offset the damages against the amount otherwise distributable to the resigning member. ~~The member's resignation shall not constitute a withdrawal from the limited liability company.~~

SECTION 58. AMENDATORY 18 O.S. 2011, Section 2019, is amended to read as follows:

Section 2019. A. Every manager is an agent of the limited liability company for the purpose of its business, and the act of every manager, including the execution in the limited liability company name of any instrument for apparently carrying on the business of the limited liability company of which he is a manager, binds the limited liability company, unless the manager so acting lacks the authority to act for the limited liability company in the particular matter, and the person with whom he is dealing has knowledge of the fact that he has no such authority. The unauthorized acts of the manager shall bind the limited liability company as to persons acting in good faith who have no knowledge of the fact that the manager had no such authority.

B. Subject to the provisions of subsection A of this section and Section ~~30~~ 2019.1 of this ~~act~~ title, instruments and documents providing for the acquisition, mortgage, or disposition of real or personal property of the limited liability company shall be valid and binding upon the limited liability company if executed by one or more of its managers.

SECTION 59. AMENDATORY 18 O.S. 2011, 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 vote in proportion to their respective ~~capital~~ interests in the profits of the limited liability company. Except as otherwise provided in subsection D of this section or unless the context otherwise requires, references in this act to a vote or the consent of the members mean a vote or consent of the members holding a majority of the ~~capital~~ interests in the profits of the limited liability company. 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 subsection A 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 60. AMENDATORY 18 O.S. 2011, 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~~ on the basis of the agreed value, as stated in the records of the limited liability company, of the contributions made by each member to the extent they have been received by the limited liability company and have not been returned; 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 and losses of the limited liability company.

SECTION 61. AMENDATORY 18 O.S. 2011, Section 2030, is amended to read as follows:

Section 2030. A. A distribution may not be made if, after giving effect to the distribution:

1. The limited liability company would not be able to pay its debts as they become due in the usual course of business; or

2. The limited liability company's total assets would be less than the sum of its total liabilities plus, unless the operating agreement permits otherwise, the amount that would be needed, if the limited liability company were to be dissolved at the time of the distribution, to satisfy the preferential rights upon dissolution of members whose preferential rights are superior to the rights of members receiving the distribution.

B. The limited liability company may base a determination that a distribution is not prohibited under subsection A of this section on:

1. Financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances; or

2. A fair valuation or other method that is reasonable in the circumstances.

C. Except as provided in subsection E of this section, the effect of a distribution under subsection A of this section is measured as of:

1. ~~The~~ In the case of a distribution by purchase, redemption, or other acquisition of a capital interest in the limited liability company, as of the date money or other property is transferred or debt incurred by the limited liability company; and

2. In all other cases, as of the date:

a. the distribution is authorized, if the payment occurs within one hundred twenty (120) days after the date of authorization~~;~~, or

~~2. The date~~

b. the payment is made if it occurs more than one hundred twenty (120) days after the date of authorization.

D. A limited liability company's indebtedness to a member, incurred by reason of a distribution made in accordance with this section, is at parity with the limited liability company's indebtedness to its general, unsecured creditors, except to the extent subordinated by agreement.

E. 1. If the terms of the indebtedness provide that payment of principal and interest is to be made only if, and to the extent that, payment of a distribution to members could then be made under this section, indebtedness of a limited liability company, including indebtedness issued as a distribution, is not a liability for

purposes of determinations made under subsection B of this section~~; and~~.

2. If the indebtedness is issued as a distribution, each payment of principal or interest on the indebtedness is treated as a distribution, the effect of which is measured on the date the payment is actually made.

SECTION 62. AMENDATORY 18 O.S. 2011, Section 2032, is amended to read as follows:

Section 2032. A ~~membership~~ capital interest is personal property. A member has no interest in specific limited liability company property.

SECTION 63. AMENDATORY 18 O.S. 2011, 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~~ capital interest associated with a membership interest in whole or in part;

2. An assignment of the ~~economic rights~~ capital interest 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~~ a capital 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~~ capital 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~~ capital 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~~ capital 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 64. AMENDATORY 18 O.S. 2011, 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~~ capital 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~~ capital 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 or capital interest. This section shall be the sole and exclusive remedy of a judgment creditor with respect to the judgment debtor's membership and capital interest.

SECTION 65. AMENDATORY 18 O.S. 2011, Section 2035, is amended to read as follows:

Section 2035. A. An assignee of ~~an~~ a capital interest in a limited liability company may become a member if and to the extent that:

1. The operating agreement provides; or

2. ~~The~~ Unless the operating agreement otherwise provides, the members representing a majority of the ~~capital~~ profits interests which are not the subject of the assignment consent in writing.

B. An assignee who becomes a member, to the extent assigned, has the rights and powers, and is subject to the restrictions and liabilities, of a member under the operating agreement and this act, Section 2000 et seq. of this title; however, unless otherwise provided in writing in the operating agreement or other written agreement, an assignee who becomes a member also is liable for any obligations of the assignor to make contributions as provided in Section 2024 of this title, but shall not be liable for the obligations of the assignor under Section 2031 of this title; however, the assignee is not obligated for liabilities of which the assignee had no knowledge at the time the assignee became a member and which could not be ascertained from a written operating agreement.

C. Regardless of whether an assignee of an interest becomes a member, the assignor is not released from liability to the limited liability company under Sections 2024, 2031~~,~~ and 2033 of this title.

D. Except as otherwise provided in writing in the operating agreement, a member who assigns the member's entire capital interest in the limited liability company ceases to be a member or to have the power to exercise any rights of a member when any assignee of the capital interest becomes a member with respect to the assigned interest.

E. Subject to subsection F of this section, a person acquiring a limited liability company interest directly from the limited liability company may become a member in a limited liability company upon compliance with the operating agreement or, if the operating agreement does not so provide in writing, upon the written consent of the members.

F. The effective time of admission of a member to a limited liability company shall be the later of:

1. The date the limited liability company is formed; or

2. The time provided in the operating agreement, or if no such time is provided therein, then when the person's admission is reflected in the records of the limited liability company.

SECTION 66. AMENDATORY 18 O.S. 2011, 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~~ A member has the power to withdraw as a member at any time, rightfully or wrongfully. A withdrawal is wrongful if the operating agreement does not specifically grant to the member a right to withdraw or the member resigns from the member's managerial duties in a member-managed limited liability company. The wrongful 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~~ withdrawing from the limited liability company. Unless the operating agreement otherwise provides, a member who has withdrawn shall be deemed an assignee with respect to the interest.

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 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~~ buyout of the member's capital interest.

SECTION 67. AMENDATORY 18 O.S. 2011, 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 or other binding agreement, to members ~~or~~, any assignees and any former members for the purchase, redemption, or other acquisition of capital interests in satisfaction of liabilities for distributions authorized but not paid under ~~Sections 2026 and 2027~~ Section 2030 of this title; and

3. Except as provided in writing in the articles of organization or operating agreement or other binding agreement, to members, any assignees and any former members for the purchase, redemption, or other acquisition of capital interests first for the return of their contributions in proportion to their respective contributions, and second respecting their ~~membership~~ capital interests or former capital interests, in proportions in which the members, assignees and former members would share in ~~distributions~~ any profits.

B. A member, assignee or former 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, assignee or former 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, assignee or former member under an agreement or other applicable law for a distribution.

C. Unless otherwise agreed, a member, assignee or former 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, assignee or former member is commenced before the expiration of the three-year period and an adjudication of liability against the member, assignee or former member is made in the action.

SECTION 68. AMENDATORY 18 O.S. 2011, 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~~ a domestic or

foreign partnership whether general or limited, and including a limited liability partnership and a limited liability limited partnership, and any unincorporated nonprofit or for-profit association, trust or enterprise having members or having outstanding shares of stock or other evidences of financial, beneficial or membership interest therein, whether formed by agreement or under statutory authority or otherwise.

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 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 memberships or membership, economic or ownership 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 memberships or membership, economic or ownership 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 memberships or membership, economic or ownership 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, and type of entity 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 not later than a time on the ~~nineteenth~~ ninetieth 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 street 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~~ a membership or membership, economic or ownership 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, which amendments or changes may amend and restate the articles of organization of the surviving domestic limited liability company in its entirety;

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 street 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.~~ E. Articles of merger or consolidation terminate the separate existence of a domestic limited liability company which is not the surviving or resulting entity in the merger or consolidation.

~~G.~~ F. 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 or pay its liabilities and distribute its assets.

G. Nothing in this section shall be deemed to authorize the merger of a charitable entity into another entity, if the charitable status of such entity would thereby be lost or impaired.

SECTION 69. AMENDATORY 18 O.S. 2011, Section 2054.1, is amended to read as follows:

Section 2054.1

CONVERSION OF ~~A BUSINESS~~ AN ENTITY

TO A LIMITED LIABILITY COMPANY

A. As used in this section, the term "~~business~~ entity" means a domestic or foreign corporation, ~~partnership, whether general or limited, business trust, common law trust, or other unincorporated association~~ a domestic or foreign partnership whether general or limited, and including a limited liability partnership and a limited liability limited partnership, and any unincorporated nonprofit or for-profit association, trust or enterprise having members or having outstanding shares of stock or other evidences of financial, beneficial or membership interest therein, whether formed by agreement or under statutory authority or otherwise.

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 ~~and~~, jurisdiction of formation of the ~~business~~ entity, and type of entity when formed and, if changed, its name ~~and~~, jurisdiction, and type of entity immediately before filing of the articles of conversion to limited liability company;

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 of the conversion to a limited liability company, which shall be a date or time certain not later than ninety (90) days after the filing, 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 effective date or time of the articles of conversion to limited liability company and the articles of organization, the ~~business~~ entity shall be converted to a domestic limited liability company and the limited liability company shall thereafter be subject to all of the provisions of ~~this act~~ the Oklahoma Limited Liability Company 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 before its conversion to a domestic limited liability company or the personal liability of any person incurred before the conversion.

F. When ~~a business~~ an entity has converted to a domestic limited liability company under this section, the domestic limited liability company shall be deemed to be the same entity as the converting ~~business~~ entity. 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 remain vested in the domestic limited liability company and shall be the property of the domestic limited liability company, 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 the conversion, 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 remain attached 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 in its capacity as a domestic limited liability company. The rights, privileges, powers and interests in property of the ~~business~~ entity, as well as the debts, liabilities and duties of the ~~business~~ entity, shall not be deemed, as a consequence of the conversion, to have been transferred to the domestic limited liability company to which the ~~business~~ entity has converted for any purpose of the laws of this state.

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 liability company.

H. Before filing the articles of conversion 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 articles of organization shall be approved by the same authorization required to approve the conversion.

I. In a conversion of ~~a business~~ an entity to a domestic limited liability company under this section, rights or securities of or memberships or membership, economic or ownership 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 memberships or membership, economic or ownership 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~~ an 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.

K. Nothing in this section shall be deemed to authorize the conversion of a charitable entity into a domestic limited liability company, if the charitable status of such entity would thereby be lost or impaired.

SECTION 70. AMENDATORY 18 O.S. 2011, Section 2054.2, is amended to read as follows:

Section 2054.2

CONVERSION OF A LIMITED

LIABILITY COMPANY TO ~~A BUSINESS~~ AN ENTITY

A. A domestic limited liability company may convert to ~~a business~~ an entity upon the authorization of such conversion in accordance with this section. As used in this section, the term "~~business~~ entity" means a domestic or foreign corporation, ~~partnership, whether general or limited, business trust, common law trust, or other unincorporated association~~ a domestic or foreign partnership whether general or limited, and including a limited liability partnership and a limited liability limited partnership, and any unincorporated nonprofit or for-profit association, trust or enterprise having members or having outstanding shares of stock or other evidences of financial, beneficial or membership interest therein, whether formed by agreement or under statutory authority or otherwise.

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 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. 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, and the conversion shall not constitute a dissolution of the limited liability company.

F. In a conversion of a domestic limited liability company to ~~a business~~ an entity under 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 memberships or membership, economic or ownership interests in the ~~business~~ entity to 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 memberships or membership, economic or ownership interests in another ~~business~~ entity or may be canceled.

G. If the governing act of the domestic ~~business~~ entity to which the limited liability company is converting does not provide for the filing of a conversion notice with the Secretary of State or the limited liability company is converting to a foreign ~~business~~ entity, 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 name ~~the business~~ and type of entity to which the limited liability company is converting and its jurisdiction of formation, if a foreign ~~business~~ entity;

4. The future effective date or time of the conversion, which shall be a date or time certain not later than ninety (90) days after the filing, if it is not to be effective upon the filing of the articles of conversion;

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

6. The agreement of the foreign ~~business~~ entity that it may be served with process in this state in any action, suit or proceeding for enforcement of any obligation of the foreign ~~business~~ entity arising while it was a domestic limited liability company, and that it irrevocably appoints the Secretary of State as its agent to accept service of process in any such action, suit or proceeding, and its street address to which a copy of the process shall be mailed to it by the Secretary of State; and

7. If the domestic ~~business~~ entity to which the domestic limited liability company is converting was required to make a filing with the Secretary of State as a condition of its formation, the type and date of such filing.

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 to which the limited liability company is converting, the filing of any formation document required by the governing act of the domestic ~~business~~ entity to 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.

I. The conversion of a limited liability company to ~~a business~~ an entity under this section and the resulting cessation of its existence as a domestic limited liability company shall not be deemed to affect any obligations or liabilities of the limited liability company incurred before the conversion or the personal liability of any person incurred before the conversion, nor shall it be deemed to affect the choice of law applicable to the limited

liability company with respect to matters arising before the conversion.

J. When a limited liability company has converted to ~~a business~~ an entity under this section, the ~~business~~ entity shall be deemed to be the same entity as the limited liability company. All of the rights, privileges and powers of the limited liability company that has converted, and all property, real, personal and mixed, and all debts due to the limited liability company, as well as all other things and causes of action belonging to the limited liability company, shall remain vested in the ~~business~~ entity to which the limited liability company has converted and shall be the property of the ~~business~~ entity, and the title to any real property vested by deed or otherwise in the limited liability company shall not revert or be in any way impaired by reason of the conversion; but all rights of creditors and all liens upon any property of the limited liability company shall be preserved unimpaired, and all debts, liabilities and duties of the limited liability company that has converted shall remain attached to the ~~business~~ entity to which the limited liability company has converted, and may be enforced against it to the same extent as if said debts, liabilities and duties had originally been incurred or contracted by it in its capacity as the ~~business~~ entity. The rights, privileges, powers and interests in property of the limited liability company that has converted, as well as the debts, liabilities and duties of the limited liability

company, shall not be deemed, as a consequence of the conversion, to have been transferred to the ~~business~~ entity to which the limited liability company has converted for any purpose of the laws of this state.

K. Nothing in this section shall be deemed to authorize the conversion of a charitable domestic limited liability company into another entity, if the charitable status of such domestic limited liability company would thereby be lost or impaired.

SECTION 71. AMENDATORY 18 O.S. 2011, Section 2054.4, is amended to read as follows:

Section 2054.4 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~~ capital 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 72. AMENDATORY 54 O.S. 2011, Section 500-210A, is amended to read as follows:

Section 500-210A.

ANNUAL CERTIFICATE FOR SECRETARY OF STATE.

(a) A limited partnership or a foreign limited partnership authorized to transact business in this state shall deliver to the Secretary of State for filing an annual certificate that states:

(1) the name of the limited partnership or foreign limited partnership;

(2) the street ~~and~~, mailing address and electronic mail address of its designated office and the name and street and mailing address of its agent for service of process in this state; and

(3) in the case of a foreign limited partnership, the state or other jurisdiction under whose law the foreign limited partnership

is formed and any fictitious name adopted under subsection (a) of Section ~~79~~ 500-905A of this ~~act~~ title.

(b) Information in an annual certificate must be current as of the date the annual certificate is delivered to the Secretary of State for filing.

(c) The annual certificate is due on the anniversary date of the filing of the certificate of limited partnership or certificate of authority of a foreign limited partnership until cancellation of the certificate of limited partnership or certificate of authority.

(d) The Secretary of State shall, at least sixty (60) days before the anniversary date of each year, cause ~~to be mailed~~ a notice of the annual certificate to be sent to each domestic limited partnership and each foreign limited partnership required to comply with the provisions of this section to the last known ~~office~~ electronic mail address of record with the Secretary of State.

SECTION 73. This act shall become effective November 1, 2013.

54-1-6993 EK 02/14/13