

1 STATE OF OKLAHOMA

2 1st Session of the 56th Legislature (2017)

3 SENATE BILL 820

By: Leewright

4  
5  
6 AS INTRODUCED

7 An Act relating to business entities; amending 18  
8 O.S. 2011, Section 1006, which relates to  
9 certificates of incorporation; modifying content  
10 requirements and permissible inclusions for  
11 certificate of incorporation; modifying execution  
12 requirements for certain documents; updating  
13 statutory references; and providing an effective  
14 date.

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

16 SECTION 1. AMENDATORY 18 O.S. 2011, Section 1006, is  
17 amended to read as follows:

18 Section 1006. CERTIFICATE OF INCORPORATION; CONTENTS

19 A. The certificate of incorporation shall set forth:

20 1. The name of the corporation which shall contain one of the  
21 words "association", "company", "corporation", "club", "foundation",  
22 "fund", "incorporated", "institute", "society", "union",  
23 "syndicate", or "limited" or abbreviations thereof, with or without  
24 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

1 letters, and which shall be such as to distinguish it upon the  
2 records in the Office of the Secretary of State from:

3 a. names of other corporations, whether domestic or  
4 foreign, then existing or which existed at any time  
5 during the preceding three (3) years,

6 b. names of partnerships whether general or limited, or  
7 domestic or foreign, then in good standing or  
8 registered or which were in good standing or  
9 registered at any time during the preceding three (3)  
10 years,

11 c. names of limited liability companies, whether domestic  
12 or foreign, then in good standing or registered or  
13 which were in good standing or registered at any time  
14 during the preceding three (3) years,

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

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

20 2. The address, including the street, number, city ~~and~~ county  
21 and postal code, of the corporation's registered office in this  
22 state, and the name of the corporation's registered agent at such  
23 address;

24

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

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

1 nonstock corporations. In the case of nonstock corporations, the  
2 fact that they are not authorized to issue capital stock shall be  
3 stated in the certificate of incorporation. The conditions of  
4 membership, or other criteria for identifying members, of nonstock  
5 corporations shall likewise be stated in the certificate of  
6 incorporation or the bylaws. Nonstock corporations shall have  
7 members, but the failure to have members shall not affect otherwise  
8 valid corporate acts or work a forfeiture or dissolution of the  
9 corporation. Nonstock corporations may provide for classes or  
10 groups of members having relative rights, powers and duties, and may  
11 make provision for the future creation of additional classes or  
12 groups of members having such relative rights, powers and duties as  
13 may from time to time be established, including rights, powers and  
14 duties senior to existing classes and groups of members. Except as  
15 otherwise provided in the Oklahoma General Corporation Act, nonstock  
16 corporations may also provide that any member or class or group of  
17 members shall have full, limited, or no voting rights or powers,  
18 including that any member or class or group of members shall have  
19 the right to vote on a specified transaction even if that member or  
20 class or group of members does not have the right to vote for the  
21 election of members of the governing body of the corporation.  
22 Voting by members of a nonstock corporation may be on a per capita,  
23 number, financial interest, class, group, or any other basis set  
24 forth. The provisions referred to in the three preceding sentences

1 may be set forth in the certificate of incorporation or the bylaws.  
2 If neither the certificate of incorporation nor the bylaws of a  
3 nonstock corporation state the conditions of membership, or other  
4 criteria for identifying members, the members of the corporation  
5 shall be deemed to be those entitled to vote for the election of the  
6 members of the governing body pursuant to the certificate of  
7 incorporation or bylaws of such corporation or otherwise until  
8 thereafter otherwise provided by the certificate of incorporation or  
9 the bylaws;

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

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

17 7. If the corporation is not for profit:

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

20 b. the name and mailing address of each trustee or  
21 director,

22 c. the number of trustees or directors to be elected at  
23 the first meeting, and  
24

1           d.    in the event the corporation is a church, the street  
2                    address of the location of the church.

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

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

10          1.    Any provision for the management of the business and for the  
11 conduct of the affairs of the corporation, and any provision  
12 creating, defining, limiting and regulating the powers of the  
13 corporation, the directors, and the shareholders, or any class of  
14 the shareholders, ~~or~~ the governing body, the members or any class or  
15 group of the members of a nonstock corporation, if such provisions  
16 are not contrary to the laws of this state. Any provision which is  
17 required or permitted by any provision of the Oklahoma General  
18 Corporation Act to be stated in the bylaws may instead be stated in  
19 the certificate of incorporation;

20          2.    The following provisions, in substantially the following  
21 form:

22           a.    for a corporation, other than a nonstock corporation:  
23                    "Whenever a compromise or arrangement is proposed  
24                    between this corporation and its creditors or any

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

1 the creditors or class of creditors, and/or on all the  
2 shareholders or class of shareholders, of this  
3 corporation, as the case may be, and also on this  
4 corporation.", and

5 b. for a nonstock corporation:

6 "Whenever a compromise or arrangement is proposed  
7 between this corporation and its creditors or any  
8 class of them and/or between this corporation and its  
9 members or any class of them, any court of equitable  
10 jurisdiction within the State of Oklahoma may, on the  
11 application in a summary way of this corporation or of  
12 any creditor or member thereof or on the application  
13 of any receiver or receivers appointed for this  
14 corporation under the provisions of Section 1106 of  
15 this title or on the application of trustees in  
16 dissolution or of any receiver or receivers appointed  
17 for this corporation under the provisions of Section  
18 1100 of this title, order a meeting of the creditors  
19 or class of creditors, and/or of the members or class  
20 of members of this corporation, as the case may be, to  
21 be summoned in such manner as the court directs. If a  
22 majority in number representing three-fourths (3/4) in  
23 value of the creditors or class of creditors, and/or  
24 of the members or class of members of this

1           corporation, as the case may be, agree to any  
2           compromise or arrangement and to any reorganization of  
3           this corporation as a consequence of such compromise  
4           or arrangement, the compromise or arrangement and the  
5           reorganization, if sanctioned by the court to which  
6           the application has been made, shall be binding on all  
7           the creditors or class of creditors, and/or on all the  
8           members or class of members, of this corporation, as  
9           the case may be, and also on this corporation.";

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

21           4. Provisions requiring, for any corporate action, the vote of  
22 a larger portion of the stock or of any class or series thereof, or  
23 of any other securities having voting power, or a larger number of  
24

1 the directors, than is required by the provisions of ~~this act~~  
2 Section 1001 et seq. of this title;

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

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

12 7. A provision eliminating or limiting the personal liability  
13 of a director to the corporation or its shareholders for monetary  
14 damages for breach of fiduciary duty as a director, provided that  
15 such provision shall not eliminate or limit the liability of a  
16 director:

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

1 No such provision shall eliminate or limit the liability of a  
2 director for any act or omission occurring before the date when such  
3 provision becomes effective.

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

7 D. Except for provisions included under paragraphs 1, 2, 5, 6  
8 and 7 of subsection A of this section and paragraphs 2, 5 and 7 of  
9 subsection B of this section, and provisions included under  
10 paragraph 4 of subsection A of this section specifying the classes,  
11 number of shares and par value of shares the a corporation other  
12 than a nonstock corporation is authorized to issue, any provision of  
13 the certificate of incorporation may be made dependent upon facts  
14 ascertainable outside the instrument, provided that the manner in  
15 which the facts shall operate upon the provision is clearly and  
16 explicitly set forth therein. As used in this subsection, the term  
17 "facts" includes, but is not limited to, the occurrence of any  
18 event, including a determination or action by any person or body,  
19 including the corporation.

20 SECTION 2. This act shall become effective November 1, 2017.

21

22 56-1-299 TEK 1/20/2017 8:04:14 AM

23

24