

1 ENGROSSED SENATE
2 BILL NO. 1741

By: Montgomery and Bergstrom of
the Senate

3 and

4 Kannady of the House

5
6 An Act relating to business entities; amending 18
7 O.S. 2011, Section 1012, as amended by Section 1,
8 Chapter 323, O.S.L. 2017 (18 O.S. Supp. 2019, Section
9 1012), which relates to the Oklahoma General
10 Corporation Act; authorizing electronic transmission
11 of certain notice; clarifying procedures for certain
12 consent effective on future date; establishing
13 procedures for certain document form, signature and
14 delivery; authorizing certain electronic
15 transactions; providing exceptions; clarifying
16 applicability of provisions; amending 18 O.S. 2011,
17 Sections 1032, 1033, as amended by Section 7, Chapter
18 323, O.S.L. 2017, 1038, Section 9, Chapter 323,
19 O.S.L. 2017, 1064, as amended by Section 14, Chapter
20 323, O.S.L. 2017, 1069, 1073, as amended by Section
21 19, Chapter 323, O.S.L. 2017, 1075.2, as amended by
22 Section 14, Chapter 88, O.S.L. 2019, 1081, as amended
23 by Section 22, Chapter 323, O.S.L. 2017, 1082, as
24 amended by Section 23, Chapter 323, O.S.L. 2017,
Section 24, Chapter 323, O.S.L. 2017, 1090.3, as
amended by Section 25, Chapter 323, O.S.L. 2017, and
1091, as amended by Section 26, Chapter 323, O.S.L.
2017 (18 O.S. Supp. 2019, Sections 1033, 1055.1,
1064, 1073, 1075.2, 1081, 1082, 1083.1, 1090.3 and
1091), which relate to the Oklahoma General
Corporation Act; authorizing electronic transmission
of certain notice; modifying procedures for issuance
of capital stock; establishing minimum amount of
consideration for issuance of shares; authorizing
stock price to be fixed by certain formula;
conforming language; modifying requirements for
certain ratification vote; modifying definitions;
requiring corporation to prepare list of certain
shareholders within specified time period; defining
term; specifying functions of certain ledger;
expanding methods of delivery of consents given by
electronic transmission; modifying definition;

clarifying usage of certain terms; conforming language; adding information required for inclusion in certain agreements; permitting mergers and consolidations under certain circumstances; clarifying effective date of amendments to certificates of incorporation; conforming appraisal rights to certain mergers; amending 18 O.S. 2011, Sections 2001, as amended by Section 37, Chapter 323, O.S.L. 2017, 2010, 2016, 2054.1, as amended by Section 52, Chapter 323, O.S.L. 2017, 2054.2, as amended by Section 53, Chapter 323, O.S.L. 2017 (18 O.S. Supp. 2019, Sections 2001, 2054.1 and 2054.2), which relate to the Oklahoma Limited Liability Company Act; modifying definitions; clarifying entities that may act as registered agents; authorizing delegation of certain manager duties; authorizing conversion of certain entities; creating the Oklahoma Public Benefit Limited Liability Company Act; providing short title; defining terms; establishing requirements and procedures for formation and operation of public benefit limited liability companies; establishing rights and duties of managers and members of certain companies; requiring reporting of certain activities; authorizing derivative lawsuit to enforce certain requirements; clarifying applicability of provisions; construing provisions; amending 54 O.S. 2011, Section 500-114A, which relates to the Uniform Limited Partnership Act; clarifying entities that may act as registered agents; updating statutory references; providing for codification; and providing an effective date.

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

SECTION 1. AMENDATORY 18 O.S. 2011, Section 1012, as amended by Section 1, Chapter 323, O.S.L. 2017 (18 O.S. Supp. 2019, Section 1012), is amended to read as follows:

Section 1012.

1 ORGANIZATION MEETING OF INCORPORATORS OR DIRECTORS NAMED IN
2 CERTIFICATE OF INCORPORATION.

3 A. After the filing of the certificate of incorporation, an
4 organization meeting of the incorporator or incorporators, or of the
5 board of directors if the initial directors were named in the
6 certificate of incorporation, shall be held either within or without
7 this state at the call of a majority of the incorporators or
8 directors, as the case may be, for the purposes of adopting bylaws,
9 electing directors if the meeting is of the incorporators, to serve
10 or hold office until the first annual meeting of shareholders or
11 until their successors are elected and qualify, electing officers if
12 the meeting is of the directors, doing any other or further acts to
13 perfect the organization of the corporation, and transacting such
14 other business as may come before the meeting.

15 B. The persons calling the meeting shall give to each other
16 incorporator or director, as the case may be, at least two (2) days'
17 ~~written~~ notice thereof in writing or by electronic transmission by
18 any usual means of communication, which notice shall state the time,
19 place and purposes of the meeting as fixed by the persons calling
20 it. Notice of the meeting need not be given to anyone who attends
21 the meeting or who signs a waiver of notice either before or after
22 the meeting.

23 C. Any action permitted to be taken at the organization meeting
24 of the incorporators or directors, as the case may be, may be taken

1 without a meeting if each incorporator or director, where there is
2 more than one, or the sole incorporator or director where there is
3 only one, ~~signs an instrument which states the action so taken~~
4 consents thereto in writing or by electronic transmission. Any
5 person whether or not then an incorporator or director may provide,
6 whether through instruction to an agent or otherwise, that a consent
7 to action will be effective at a future time, including a time
8 determined upon the happening of an event, no later than sixty (60)
9 days after such instruction is given or such provision is made and
10 such consent shall be deemed to have been given for purposes of this
11 subsection at such effective time so long as such person is then an
12 incorporator or director, as the case may be, and did not revoke the
13 consent prior to such time. Any such consent shall be revocable
14 prior to its becoming effective.

15 D. If any incorporator is not available to act, then any person
16 for whom or on whose behalf the incorporator was acting directly or
17 indirectly as employee or agent may take any action that such
18 incorporator would have been authorized to take under this section
19 or Section 1011 of this title; provided, that any instrument signed
20 by such other person, or any record of the proceedings of a meeting
21 in which such person participated, shall state that such
22 incorporator is not available and the reason therefor, that such
23 incorporator was acting directly or indirectly as employee or agent
24 for or on behalf of such person, and that such person's signature on

1 such instrument or participation in such meeting is otherwise
2 authorized and not wrongful.

3 SECTION 2. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 1014.3 of Title 18, unless there
5 is created a duplication in numbering, reads as follows:

6 DOCUMENT FORM, SIGNATURE AND DELIVERY.

7 A. Except as provided in subsection B of this section, without
8 limiting the manner in which any act or transaction may be
9 documented, or the manner in which a document may be signed or
10 delivered:

11 1. Any act or transaction contemplated or governed by this
12 title or the certificate of incorporation or bylaws may be provided
13 for in a document, and an electronic transmission shall be deemed the
14 equivalent of a written document. "Document" means (i) any tangible
15 medium on which information is inscribed, and includes handwritten,
16 typed, printed or similar instruments, and copies of such
17 instruments and (ii) an electronic transmission;

18 2. Whenever this act or the certificate of incorporation or
19 bylaws requires or permits a signature, the signature may be a
20 manual, facsimile, conformed or electronic signature. "Electronic
21 signature" means an electronic symbol or process that is attached to,
22 or logically associated with, a document and executed or adopted by
23 a person with an intent to authenticate or adopt the document; and
24

1 3. Unless otherwise agreed between the sender and recipient, an
2 electronic transmission shall be deemed delivered to a person for
3 purposes of this title and the certificate of incorporation and
4 bylaws when it enters an information processing system that the
5 person has designated for the purpose of receiving electronic
6 transmissions of the type delivered, so long as the electronic
7 transmission is in a form capable of being processed by that system
8 and such person is able to retrieve the electronic transmission.
9 Whether a person has so designated an information processing system
10 is determined by the certificate of incorporation, the bylaws or from
11 the context and surrounding circumstances, including the parties'
12 conduct. An electronic transmission is delivered under this section
13 even if no person is aware of its receipt. Receipt of an electronic
14 acknowledgement from an information processing system establishes
15 that an electronic transmission was received but, by itself, does
16 not establish that the content sent corresponds to the content
17 received.

18 This act shall not prohibit one or more persons from conducting a
19 transaction in accordance with the Uniform Electronic Transaction Act
20 so long as the part or parts of the transaction that are governed by
21 this act are documented, signed and delivered in accordance with this
22 subsection or otherwise in accordance with this act. This subsection
23 shall apply solely for purposes of determining whether an act or
24 transaction has been documented, and the document has been signed and

1 delivered, in accordance with this act, the certificate of
2 incorporation and the bylaws.

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

4 1. A document filed with or submitted to the Secretary of State
5 or a court or other judicial or governmental body of this state;

6 2. A document comprising part of the stock ledger;

7 3. A certificate representing a security;

8 4. Any document expressly referenced as a notice or waiver of
9 notice by this act, the certificate of incorporation or bylaws;

10 5. A consent in lieu of a meeting given by a director,
11 shareholder or incorporator;

12 6. A ballot to vote on actions at a meeting of shareholders;
13 and

14 7. An act or transaction effected pursuant to Section 1100.1 of
15 Title 18 of the Oklahoma Statutes.

16 The provisions of this subsection shall not create any
17 presumption about the lawful means to document a matter addressed by
18 this subsection, or the lawful means to sign or deliver a document
19 addressed by this subsection. A provision of the certificate of
20 incorporation or bylaws shall not limit the application of subsection
21 A of this section unless the provision expressly restricts one or
22 more of the means of documenting an act or transaction, or of signing
23 or delivering a document, permitted by subsection A of this section.
24

1 C. In the event that any provision of this act is deemed to
2 modify, limit or supersede the Electronic Signatures in Global and
3 National Commerce Act, 15 U.S.C. Sections 7001 et. seq., the
4 provisions of this act shall control to the fullest extent permitted
5 by ~~section~~ Section 7002(a)(2) of such act.

6 SECTION 3. AMENDATORY 18 O.S. 2011, Section 1032, is
7 amended to read as follows:

8 Section 1032.

9 CLASSES AND SERIES OF STOCK; RIGHTS, ETC.

10 A. Every corporation may issue one or more classes of stock or
11 one or more series of stock within any class thereof, any or all of
12 which classes may be of stock with par value or stock without par
13 value and which classes or series may have voting powers, full or
14 limited, or no voting powers, and designations, preferences and
15 relative, participating, optional, or other special rights, and
16 qualifications, limitations, or restrictions thereof, as shall be
17 stated and expressed in the certificate of incorporation or of any
18 amendment thereto, or in the resolution or resolutions providing for
19 the issue of the stock adopted by the board of directors pursuant to
20 authority expressly vested in it by the provisions of its
21 certificate of incorporation. Any of the voting powers,
22 designations, preferences, rights, and qualifications, limitations
23 or restrictions of any class or series of stock may be made
24 dependent upon facts ascertainable outside the certificate of

1 incorporation or of any amendment thereto, or outside the resolution
2 or resolutions providing for the issue of the stock adopted by the
3 board of directors pursuant to authority expressly vested in it by
4 the provisions of its certificate of incorporation; provided, that
5 the manner in which the facts shall operate upon the voting powers,
6 designations, preferences, rights, and qualifications, limitations,
7 or restrictions of the class or series of stock is clearly and
8 expressly set forth in the certificate of incorporation or in the
9 resolution or resolutions providing for the issue of the stock
10 adopted by the board of directors. The power to increase or
11 decrease or otherwise adjust the capital stock as provided for in
12 the Oklahoma General Corporation Act shall apply to all or any such
13 classes of stock. The term "facts", as used in this subsection,
14 includes, but is not limited to, the occurrence of any event,
15 including a determination or action by any person or body, including
16 the corporation.

17 B. Any stock of any class or series may be made subject to
18 redemption by the corporation at its option or at the option of the
19 holders of the stock or upon the happening of a specified event;
20 provided however, immediately following any redemption, the
21 corporation shall have outstanding one or more shares or one or more
22 classes or series of stock, which share, or shares together, shall
23 have full voting powers. Notwithstanding the limitation stated in
24 the foregoing proviso:

1 1. Any stock of a regulated investment company registered under
2 the Investment Company Act of 1940, as heretofore or hereafter
3 amended, may be made subject to redemption by the corporation at its
4 option or at the option of the holders of the stock.

5 2. Any stock of a corporation which directly or indirectly
6 holds a license or franchise from a governmental agency to conduct
7 its business or is a member of a national securities exchange, which
8 license, franchise, or membership is conditioned upon some or all of
9 the holders of its stock possessing prescribed qualifications, may
10 be made subject to redemption by the corporation to the extent
11 necessary to prevent the loss of the license, franchise, or
12 membership or to reinstate it. Any stock which may be made
13 redeemable under this section may be redeemed for cash, property, or
14 rights, including securities of the same or another corporation, at
15 such time or times, price or prices, or rate or rates, and with any
16 adjustments, as shall be stated in the certificate of incorporation
17 or in the resolution or resolutions providing for the issue of the
18 stock adopted by the board of directors as provided for in
19 subsection A of this section.

20 C. The holders of preferred or special stock of any class or of
21 any series thereof shall be entitled to receive dividends at such
22 rates, conditions, and times as shall be stated in the certificate
23 of incorporation or in the resolution or resolutions providing for
24 the issue of the stock adopted by the board of directors as provided

1 for in subsection A of this section, payable in preference to, or in
2 relation to, the dividends payable on any other class or classes or
3 of any other series of stock, and cumulative or noncumulative as
4 shall be so stated and expressed. When dividends upon the preferred
5 and special stocks, if any, to the extent of the preference to which
6 the stocks are entitled, shall have been paid or declared and set
7 apart for payment, a dividend on the remaining class or classes or
8 series of stock may then be paid out of the remaining assets of the
9 corporation available for dividends as otherwise provided for in the
10 Oklahoma General Corporation Act.

11 D. The holders of the preferred or special stock of any class
12 or of any series thereof shall be entitled to the rights upon the
13 dissolution of, or upon any distribution of the assets of, the
14 corporation as shall be stated in the certificate of incorporation
15 or in the resolution or resolutions providing for the issue of the
16 stock adopted by the board of directors as provided for in
17 subsection A of this section.

18 E. Any stock of any class or of any series thereof may be made
19 convertible into, or exchangeable for, at the option of either the
20 holder or the corporation or upon the happening of a specified
21 event, shares of any other class or classes or any other series of
22 the same or any other class or classes of stock of the corporation,
23 at the price or prices or at the rate or rates of exchange, and with
24 adjustments as shall be stated in the certificate of incorporation

1 or in the resolution or resolutions providing for the issue of the
2 stock adopted by the board of directors as provided for in
3 subsection A of this section.

4 F. If any corporation shall be authorized to issue more than
5 one class of stock or more than one series of any class, the powers,
6 designations, preferences, and relative, participating, optional, or
7 other special rights of each class of stock or series thereof and
8 the qualifications, limitations, or restrictions of such preferences
9 or rights shall be set forth in full or summarized on the face or
10 back of the certificate which the corporation shall issue to
11 represent the class or series of stock; provided that, except as
12 otherwise provided for in Section 1055 of this title, in lieu of the
13 foregoing requirements, there may be set forth on the face or back
14 of the certificate which the corporation shall issue to represent
15 the class or series of stock, a statement that the corporation will
16 furnish without charge to each shareholder who so requests the
17 powers, designations, preferences, and relative, participating,
18 optional, or other special rights of each class of stock or series
19 thereof and the qualifications, limitations, or restrictions of the
20 preferences or rights. Within a reasonable time after the issuance
21 or transfer of uncertificated stock, the corporation shall send to
22 the registered owner ~~thereof~~ a ~~written~~ notice, in writing or by
23 electronic transmission, containing the information required to be
24 set forth or stated on certificates pursuant to this section or

1 Section 1037, subsection A of Section 1055 or subsection A of
2 Section 1063 of this title, or with respect to this section a
3 statement that the corporation will furnish without charge to each
4 shareholder who so requests the powers, designations, preferences,
5 and relative, participating, optional, or other special rights of
6 each class of stock or series thereof and the qualifications,
7 limitations, or restrictions of the preferences or rights. Except
8 as otherwise expressly provided by law, the rights and obligations
9 of the holders of uncertificated stock and the rights and
10 obligations of the holder of certificates representing stock of the
11 same class and series shall be identical.

12 G. 1. When any corporation desires to issue any shares of
13 stock of any class or of any series of any class of which the
14 powers, designations, preferences, and relative, participating,
15 optional, or other rights, if any, or the qualifications,
16 limitations, or restrictions thereof, if any, shall not have been
17 set forth in the certificate of incorporation or in any amendment
18 thereto but shall be provided for in a resolution or resolutions
19 adopted by the board of directors pursuant to authority expressly
20 vested in it by the provisions of the certificate of incorporation
21 or any amendment thereto, a certificate of designations setting
22 forth a copy of the resolution or resolutions and the number of
23 shares of stock of the class or series to which the resolution or
24 resolutions apply shall be executed, acknowledged, and filed, and

1 shall become effective, in accordance with the provisions of Section
2 1007 of this title. Unless otherwise provided in any resolution or
3 resolutions, the number of shares of stock of any series to which
4 the resolution or resolutions apply may be increased, but not above
5 the total number of authorized shares of the class, or decreased,
6 but not below the number of shares thereof then outstanding, by a
7 certificate likewise executed, acknowledged, and filed setting forth
8 a statement that a specified increase or decrease therein had been
9 authorized and directed by a resolution or resolutions likewise
10 adopted by the board of directors. In case the number of the shares
11 shall be decreased, the number of shares so specified in the
12 certificate shall resume the status which they had prior to the
13 adoption of the first resolution or resolutions. Unless otherwise
14 provided in the certificate of incorporation, if no shares of stock
15 have been issued of a class or series of stock established by a
16 resolution of the board of directors, the voting powers,
17 designations, preferences, and relative, participating, optional, or
18 other rights, if any, or the qualifications, limitations, or
19 restrictions thereof, may be amended by a resolution or resolutions
20 adopted by the board of directors. A certificate which states that
21 no shares of the class or series have been issued, sets forth a copy
22 of the resolution or resolutions, and, if the designation of the
23 class or series is being changed, indicates the original designation
24 and the new designation, shall be executed, acknowledged, and filed,

1 and shall become effective, in accordance with the provisions of
2 Section 1007 of this title. When no shares of any class or series
3 are outstanding, either because none were issued or because no
4 issued shares of any class or series remain outstanding, a
5 certificate setting forth a resolution or resolutions adopted by the
6 board of directors that none of the authorized shares of the class
7 or series are outstanding, and that none will be issued subject to
8 the certificate of designations previously filed with respect to the
9 class or series, may be executed, acknowledged, and filed in
10 accordance with the provisions of Section 1007 of this title and,
11 when the certificate becomes effective, it shall have the effect of
12 eliminating from the certificate of incorporation all matters set
13 forth in the certificate of designations with respect to the class
14 or series of stock.

15 2. When any certificate filed pursuant to the provisions of
16 this subsection becomes effective, it shall have the effect of
17 amending the certificate of incorporation; except that neither the
18 filing of the certificate nor the filing of a restated certificate
19 of incorporation pursuant to Section 1080 of this title shall
20 prohibit the board of directors from subsequently adopting
21 resolutions as authorized by this subsection.

22 SECTION 4. AMENDATORY 18 O.S. 2011, Section 1033, as
23 amended by Section 7, Chapter 323, O.S.L. 2017 (18 O.S. Supp. 2019,
24 Section 1033), is amended to read as follows:

1 Section 1033.

2 ISSUANCE OF STOCK, LAWFUL CONSIDERATION - FULLY PAID STOCK.

3 A. The consideration, as determined pursuant to the provisions
4 of subsections A and B of Section 1034 of this title, for
5 subscriptions to, or the purchase of, the capital stock to be issued
6 by a corporation shall be paid in such form and in such manner as
7 the board of directors shall determine. The board of directors may
8 authorize capital stock to be issued for consideration consisting of
9 cash, any tangible or intangible property or any benefit to the
10 corporation, or any combination thereof, except for services to be
11 performed. The resolution authorizing the issuance of capital stock
12 may provide that any stock to be issued pursuant to such resolution
13 may be issued in one or more transactions in such numbers and at
14 such times as are set forth in or determined by or in the manner set
15 forth in the resolution, which may include a determination or action
16 by any person or body, including the corporation, provided the
17 resolution fixes a maximum number of shares that may be issued
18 pursuant to such resolution, a time period during which such shares
19 may be issued and a minimum amount of consideration for which such
20 shares may be issued. The board of directors may determine the
21 amount of ~~such~~ consideration for which shares may be issued by
22 setting a minimum amount of consideration or by approving a formula
23 by which the amount of consideration is determined. The formula may
24 include or be made dependent upon facts ascertainable outside the

1 formula, provided the manner in which such facts shall operate upon
2 the formula is clearly and expressly set forth in the formula or in
3 the resolution approving the formula. In the absence of actual
4 fraud in the transaction, the judgment of the directors as to the
5 value of such consideration shall be conclusive. The capital stock
6 so issued shall be deemed to be fully paid and nonassessable stock
7 upon receipt by the corporation of the authorized consideration.

8 B. The provisions of subsection A of this section shall not be
9 construed to prevent the board of directors from issuing partly paid
10 shares in accordance with the provisions of Section 1037 of this
11 title.

12 SECTION 5. AMENDATORY 18 O.S. 2011, Section 1038, is
13 amended to read as follows:

14 Section 1038.

15 RIGHTS AND OPTIONS RESPECTING STOCK.

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

1 B. The terms upon which, including the time or times, which may
2 be limited or unlimited in duration, at or within which, and the
3 consideration, including any formula by which such consideration may
4 be determined, for which any such shares may be acquired from the
5 corporation upon the exercise of any such right or option, shall be
6 such as shall be stated in the certificate of incorporation, or in a
7 resolution adopted by the board of directors providing for the
8 creation and issue of such rights or options, and, in every case,
9 shall be set forth or incorporated by reference in the instrument or
10 instruments evidencing such rights or options. A formula by which
11 such consideration may be determined may include or be made
12 dependent upon facts ascertainable outside the formula, provided the
13 manner in which such facts shall operate upon the formula is clearly
14 and expressly set forth in the formula or in the resolution
15 approving the formula. In the absence of actual fraud in the
16 transaction, the judgment of the directors as to the consideration
17 for the issuance of such rights or options and the sufficiency
18 thereof shall be conclusive.

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

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

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

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

8 D. In case the shares of stock of the corporation to be issued
9 upon the exercise of such rights or options shall be shares having a
10 par value, the consideration so to be received therefor shall have a
11 value not less than the par value thereof. In case the shares of
12 stock so to be issued shall be shares of stock without par value,
13 the consideration therefor shall be determined in the manner
14 provided for in Section 1034 of this title.

15 SECTION 6. AMENDATORY Section 9, Chapter 323, O.S.L.
16 2017 (18 O.S. Supp. 2019, Section 1055.1), is amended to read as
17 follows:

18 Section 1055.1.

19 RATIFICATION OF DEFECTIVE CORPORATE ACTS AND STOCK

20 A. Subject to subsection F of this section, no defective
21 corporate act or putative stock shall be void or voidable solely as
22 a result of a failure of authorization if ratified as provided in
23 this section or validated by the District Court in a proceeding
24 brought under Section ~~10 of this act~~ 1055.2 of this title.

1 B. 1. In order to ratify one or more defective corporate acts
2 pursuant to this section, other than the ratification of an election
3 of the initial board of directors pursuant to paragraph 2 of this
4 subsection, the board of directors of the corporation shall adopt
5 resolutions stating:

- 6 a. the defective corporate act or acts to be ratified,
- 7 b. the date of each defective corporate act or acts,
- 8 c. if such defective corporate act or acts involved the
9 issuance of shares of putative stock, the number and
10 type of shares of putative stock issued and the date
11 or dates upon which such putative shares were
12 purported to have been issued,
- 13 d. the nature of the failure of authorization in respect
14 of each defective corporate act to be ratified, and
15 e. that the board of directors approves the ratification
16 of the defective corporate act or acts.

17 The resolutions may also provide that, at any time before the
18 validation effective time for the defective act or acts,
19 notwithstanding approval of the ratification by shareholders, the
20 board of directors may abandon the ratification without further
21 action of the shareholders. The quorum and voting requirements
22 applicable to the ratification by the board of directors shall be
23 the quorum and voting requirements applicable at the time to the
24 type of defective corporate act proposed to be ratified when the

1 board adopts the resolutions ratifying the defective corporate act;
2 provided, that if the certificate of incorporation or bylaws of the
3 corporation, any plan or agreement to which the corporation was a
4 party or any provision of ~~Title 18 of the Oklahoma Statutes~~ this
5 title, in each case as in effect as of the time of the defective
6 corporate act, would have required a larger number or portion of
7 directors or of specified directors for a quorum to be present or to
8 approve the defective corporate act, such larger number or portion
9 of such directors or such specified directors shall be required for
10 a quorum to be present or to adopt the ratifying resolutions, as
11 applicable, except that the presence or approval of any director
12 elected, appointed or nominated by holders of any class or series of
13 which no shares are then outstanding, or by any person that is no
14 longer a shareholder, shall not be required.

15 2. To ratify a defective corporate act in respect of the
16 election of the initial board of directors of the corporation, a
17 majority of the persons who, at the time the resolutions required by
18 this paragraph are adopted, are exercising the powers of directors
19 under claim and color of an election or appointment as such may
20 adopt resolutions stating:

- 21 a. the name of the person or persons who first took
22 action in the name of the corporation as the initial
23 board of directors of the corporation,
24

1 b. the earlier of the date on which such persons first
2 took such action or were purported to have been
3 elected as the initial board of directors, and

4 c. that the ratification of the election of such person
5 or persons as the initial board of directors is
6 approved.

7 C. Each defective corporate act ratified pursuant to paragraph
8 1 of subsection B of this section shall be submitted to shareholders
9 for approval as provided in subsection D of this section, unless:

10 ~~(1) no~~

11 1. a. No other provision of ~~Title 18 of the Oklahoma~~
12 ~~Statutes~~ this title, and no provision of the
13 certificate of incorporation or bylaws of the
14 corporation, or of any plan or agreement to which the
15 corporation is a party, would have required
16 shareholder approval of the defective corporate act to
17 be ratified, either at the time of the defective
18 corporate act or at the time the board of directors
19 adopts the resolutions ratifying the defective
20 corporate act pursuant to paragraph 1 of subsection B
21 of this section, ~~and (2) the.~~

22 b. The defective corporate act did not result from a
23 failure to comply with Section 1090.3 of ~~Title 18 of~~
24 ~~the Oklahoma Statutes~~ this title; or

1 2. As of the record date for determining the shareholders
2 entitle to vote on the ratification of the defective corporate act,
3 there are no shares of valid stock outstanding and entitled to vote
4 thereon, regardless of whether there then exist any shares of
5 putative stock.

6 D. If ratification of a defective corporate act is required to
7 be submitted to shareholders for approval pursuant to subsection C
8 of this section, due notice of the time, place, if any, and purpose
9 of the meeting shall be given at least twenty (20) days before the
10 date of the meeting to each holder of valid stock and putative
11 stock, whether voting or nonvoting, at the address of such holder as
12 it appears or most recently appeared, as appropriate, on the records
13 of the corporation. The notice shall also be given to the holders
14 of record of valid stock and putative stock, whether voting or
15 nonvoting, as of the time of the defective corporate act, ~~other than~~
16 or, in the case of any defective corporate act that involved the
17 establishment of a record date for notice of or voting at any
18 meeting of shareholders, for action by written consent of
19 shareholders in lieu of a meeting, or for any other purpose, as of
20 the record date for notice of or voting at such meeting, the record
21 date for action by written consent, or the record date for such
22 other action, as the case may be, except that no notice need be
23 given to holders whose identities or addresses cannot be determined
24 from the records of the corporation. The notice shall contain a

1 copy of the resolutions adopted by the board of directors pursuant
2 to paragraph 1 of subsection B of this section or the information
3 required by paragraphs a through e of paragraph 1 of subsection B of
4 this section and a statement that any claim that the defective
5 corporate act or putative stock ratified hereunder is void or
6 voidable due to the failure of authorization, or that the District
7 Court should declare in its discretion that a ratification in
8 accordance with this section not be effective or be effective only
9 on certain conditions must be brought within one hundred twenty
10 (120) days from the validation effective time. At such meeting the
11 quorum and voting requirements applicable to the ratification of
12 such defective corporate act shall be the quorum and voting
13 requirements applicable to the type of defective corporate act
14 proposed to be ratified at the time of the approval of the
15 ratification, except that:

16 1. If the certificate of incorporation or bylaws of the
17 corporation, any plan or agreement to which the corporation was a
18 party or any provision of this title in effect as of the time of the
19 defective corporate act would have required a larger number or
20 portion of stock or of any class or series thereof or of specified
21 shareholders for a quorum to be present or to approve the defective
22 corporate act, the presence or approval of such larger number or
23 portion of stock or of such class or series thereof or of such
24 specified shareholders shall be required for a quorum to be present

1 or to approve the ratification of the defective corporate act, as
2 applicable, except that the presence or approval of shares of any
3 class or series of which no shares are then outstanding, or of any
4 person that is no longer a shareholder, shall not be required;

5 2. The approval by shareholders of the ratification of the
6 election of a director shall require the affirmative vote of the
7 majority of shares present at the meeting and entitled to vote on
8 the election of such director, except that if the certificate of
9 incorporation or bylaws of the corporation then in effect or in
10 effect at the time of the defective election require or required a
11 larger number or portion of stock or of any class or series thereof
12 or of specified shareholders to elect such director, the affirmative
13 vote of such larger number or portion of stock or of any class or
14 series thereof or of specified shareholders shall be required to
15 ratify the election of such director, except that the presence or
16 approval of shares of any class or series of which no shares are
17 then outstanding, or of any person that is no longer a shareholder,
18 shall not be required; and

19 3. In the event of a failure of authorization resulting from
20 failure to comply with the provisions of Section 1090.3 of ~~Title 18~~
21 ~~of the Oklahoma Statutes~~ this title, the ratification of the
22 defective corporate act shall require the vote set forth in
23 paragraph 3 of subsection A of Section 1090.3 of ~~Title 18 of the~~
24

1 ~~Oklahoma Statutes~~ this title, regardless of whether such vote would
2 have otherwise been required.

3 Shares of putative stock on the record date for determining
4 shareholders entitled to vote on any matter submitted to
5 shareholders pursuant to subsection C of this section, and without
6 giving effect to any ratification that becomes effective after such
7 record date, shall neither be entitled to vote nor counted for
8 quorum purposes in any vote to ratify any defective corporate act.

9 E. If a defective corporate act ratified pursuant to this
10 section would have required under any other section of ~~Title 18 of~~
11 ~~the Oklahoma Statutes~~ this title the filing of a certificate in
12 accordance with Section 1007 of ~~Title 18 of the Oklahoma Statutes~~
13 this title, then, whether or not a certificate was previously filed
14 in respect of such defective corporate act and in lieu of filing the
15 certificate otherwise required by ~~Title 18 of the Oklahoma Statutes~~
16 this title, the corporation shall file a certificate of validation
17 with respect to such defective corporate act in accordance with
18 Section 1007 of ~~Title 18 of the Oklahoma Statutes~~ this title. A
19 separate certificate of validation shall be required for each
20 defective corporate act requiring the filing of a certificate of
21 validation under this section, except that (i) two or more defective
22 corporate acts may be included in a single certificate of validation
23 if the corporation filed, or to comply with ~~Title 18 of the Oklahoma~~
24 ~~Statutes~~ this title would have filed, a single certificate under

1 another provision of ~~Title 18 of the Oklahoma Statutes~~ this title to
2 effect such acts, and (ii) two or more overissues of shares of any
3 class, classes or series of stock may be included in a single
4 certificate of validation, provided that the increase in the number
5 of authorized shares of each such class or series set forth in the
6 certificate of validation shall be effective as of the date of the
7 first such overissue. The certificate of validation shall set
8 forth:

9 1. Each defective corporate act that is the subject of the
10 certificate of validation, including, in the case of any defective
11 corporate act involving the issuance of shares of putative stock,
12 the number and type of shares of putative stock issued and the date
13 or dates upon which such putative shares were purported to have been
14 issued, the date of such defective corporate act, and the nature of
15 the failure of authorization in respect of such defective corporate
16 act;

17 2. A statement that such defective corporate act was ratified
18 in accordance with this section, including the date on which the
19 board of directors ratified such defective corporate act and the
20 date, if any, on which the shareholders approved the ratification of
21 such defective corporate act; and

22 3. The information required by one of the following paragraphs:

23 a. if a certificate was previously filed under Section

24 1007 of ~~Title 18 of the Oklahoma Statutes~~ this title

1 in respect of such defective corporate act and no
2 changes to such certificate are required to give
3 effect to such defective corporate act in accordance
4 with this section, the certificate of validation shall
5 set forth (1) the name, title and filing date of the
6 certificate previously filed and of any certificate of
7 correction thereto and (2) a statement that a copy of
8 the certificate previously filed, together with any
9 certificate of correction thereto, is attached as an
10 exhibit to the certificate of validation,

11 b. if a certificate was previously filed under Section
12 1007 of ~~Title 18 of the Oklahoma Statutes~~ this title
13 in respect of the defective corporate act and such
14 certificate requires any change to give effect to the
15 defective corporate act in accordance with this
16 section, including a change to the date and time of
17 the effectiveness of such certificate, the certificate
18 of validation shall set forth (1) the name, title and
19 filing date of the certificate so previously filed and
20 of any certificate of correction thereto, (2) a
21 statement that a certificate containing all of the
22 information required to be included under the
23 applicable section or sections of ~~Title 18 of the~~
24 ~~Oklahoma Statutes~~ this title to give effect to the

defective corporate act is attached as an exhibit to the certificate of validation, and (3) the date and time that such certificate shall be deemed to have become effective pursuant to this section, or

c. if a certificate was not previously filed under Section 1007 of ~~Title 18 of the Oklahoma Statutes~~ this title in respect of the defective corporate act and the defective corporate act ratified pursuant to this section would have required under any other section of ~~Title 18 of the Oklahoma Statutes~~ this title the filing of a certificate in accordance with Section 1007 of ~~Title 18 of the Oklahoma Statutes~~ this title, the certificate of validation shall set forth (1) a statement that a certificate containing all of the information required to be included under the applicable section or sections of ~~Title 18 of the Oklahoma Statutes~~ this title to give effect to the defective corporate act is attached as an exhibit to the certificate of validation, and (2) the date and time that such certificate shall be deemed to have become effective pursuant to this section.

A certificate attached to a certificate of validation pursuant to subparagraph b or c of paragraph 3 of this subsection need not be separately executed and acknowledged and need not include any

1 statement required by any other section of ~~Title 18 of the Oklahoma~~
2 ~~Statutes~~ this title that such instrument has been approved and
3 adopted in accordance with the provisions of such other section.

4 F. From and after the validation effective time, unless
5 otherwise determined in an action brought pursuant to Section ~~10 of~~
6 ~~this act~~ 1055.2 of this title:

7 1. Subject to the last sentence of subsection D of this
8 section, each defective corporate act ratified in accordance with
9 this section shall no longer be deemed void or voidable as a result
10 of the failure of authorization described in the adopted resolutions
11 and such effect shall be retroactive to the time of the defective
12 corporate act; and

13 2. Subject to the last sentence of subsection D of this
14 section, each share or fraction of a share of putative stock issued
15 or purportedly issued pursuant to any such defective corporate act
16 shall no longer be deemed void or voidable and shall be deemed to be
17 an identical share or fraction of a share of outstanding stock as of
18 the time it was purportedly issued.

19 G. In respect of each defective corporate act ratified by the
20 board of directors pursuant to subsection B of this section, prompt
21 notice of the ratification shall be given to all holders of valid
22 stock and putative stock, whether voting or nonvoting, as of the
23 date the board of directors adopts the resolutions approving such
24 defective corporate act, or as of a date within sixty (60) days

1 after the date of adoption, as established by the board of
2 directors, at the address of such holder as it appears or most
3 recently appeared, as appropriate, on the records of the
4 corporation. The notice shall also be given to the holders of
5 record of valid stock and putative stock, whether voting or
6 nonvoting, as of the time of the defective corporate act, other than
7 holders whose identities or addresses cannot be determined from the
8 records of the corporation. The notice shall contain a copy of the
9 resolutions adopted pursuant to subsection B of this section or the
10 information specified in subparagraphs a through e of paragraph 1 of
11 subsection B of this section or subparagraphs a through c of
12 paragraph 2 of subsection B of this section, as applicable, and a
13 statement that any claim that the defective corporate act or
14 putative stock ratified hereunder is void or voidable due to the
15 failure of authorization, or that the district court should declare
16 in its discretion that a ratification in accordance with this
17 section not be effective or be effective only on certain conditions
18 must be brought within one hundred twenty (120) days from the later
19 of the validation effective time or the time at which the notice
20 required by this subsection is given. Notwithstanding the
21 foregoing, no such notice shall be required if notice of the
22 ratification of the defective corporate act is to be given in
23 accordance with subsection D of this section, and in the case of a
24 corporation that has a class of stock listed on a national

1 securities exchange, the notice required by this subsection and
2 subsection D of this section may be deemed given if disclosed in a
3 document publicly filed by the corporation with the Securities and
4 Exchange Commission pursuant to Sections 13, 14 or 15(d) of the
5 Securities Exchange Act of 1934, as amended, and the rules and
6 regulations promulgated thereunder, or the corresponding provisions
7 of any subsequent United States federal securities laws, rules or
8 regulations. If any defective corporate act has been approved by
9 shareholders acting pursuant to Section 1073 of ~~Title 18 of the~~
10 ~~Oklahoma Statutes~~ this title, the notice required by this subsection
11 may be included in any notice required to be given pursuant to
12 subsection F of Section 1073 of ~~Title 18 of the Oklahoma Statutes~~
13 this title and, if so given, shall be sent to the shareholders
14 entitled to notice under subsection F of Section 1073 of ~~Title 18 of~~
15 ~~the Oklahoma Statutes~~ this title and to all holders of valid and
16 putative stock to whom notice would be required under this
17 subsection if the defective corporate act had been approved at a
18 meeting other than any shareholder who approved the action by
19 consent in lieu of a meeting pursuant to Section 1073 of ~~Title 18 of~~
20 ~~the Oklahoma Statutes~~ this title or any holder of putative stock who
21 otherwise consented thereto in writing. Solely for purposes of
22 subsection D of this section and this subsection, notice to holders
23 of putative stock, and notice to holders of valid stock and putative
24 stock as of the time of the defective corporate act, shall be

1 treated as notice to holders of valid stock for purposes of Sections
2 1067, 1073, 1074, 1075, 1075.2 and 1075.3 of ~~Title 18 of the~~
3 ~~Oklahoma Statutes~~ this title.

4 H. As used in this section and in Section ~~10 of this act~~ 1055.2
5 of this title only, the term:

6 1. "Defective corporate act" means an overissue, an election or
7 appointment of directors that is void or voidable due to a failure
8 of authorization, or any act or transaction purportedly taken by or
9 on behalf of the corporation that is, and at the time such act or
10 transaction was purportedly taken would have been, within the power
11 of a corporation under ~~subchapter II of Title 18 of the Oklahoma~~
12 ~~Statutes~~ this title, without regard to the failure of authorization
13 identified in subparagraph d of paragraph 1 of subsection B of this
14 section, but is void or voidable due to a failure of authorization;

15 2. "Failure of authorization" means ~~(a):~~ :

16 a. the failure to authorize or effect an act or
17 transaction in compliance with:

18 (1) the provisions of ~~Title 18 of the Oklahoma~~
19 ~~Statutes~~ this title,

20 (2) the certificate of incorporation or bylaws of the
21 corporation, or

22 (3) any plan or agreement to which the corporation is
23 a party or the disclosure set forth in any proxy
24 or consent solicitation statement, if and to the

1 extent such failure would render such act or
2 transaction void or voidable, or ~~(b)~~

3 b. the failure of the board of directors or any officer
4 of the corporation to authorize or approve any act or
5 transaction taken by or on behalf of the corporation
6 that would have required for its due authorization the
7 approval of the board of directors or such officer;

8 3. "Overissue" means the purported issuance of (a) shares of
9 capital stock of a class or series in excess of the number of shares
10 of such class or series the corporation has the power to issue under
11 Section 1042 of ~~Title 18 of the Oklahoma Statutes~~ this title at the
12 time of such issuance, or (b) shares of any class or series of
13 capital stock that is not then authorized for issuance by the
14 certificate of incorporation of the corporation;

15 4. "Putative stock" means the shares of any class or series of
16 capital stock of the corporation, including shares issued upon
17 exercise of options, rights, warrants or other securities
18 convertible into shares of capital stock of the corporation, or
19 interests with respect thereto that were created or issued pursuant
20 to a defective corporate act, that: (a) but for any failure of
21 authorization, would constitute valid stock, or (b) cannot be
22 determined by the board of directors to be valid stock;

23 5. "Time of the defective corporate act" means the date and
24 time the defective corporate act was purported to have been taken;

1 6. "Valid stock" means the shares of any class or series of
2 capital stock of the corporation that have been duly authorized and
3 validly issued in accordance with ~~Title 18 of the Oklahoma Statutes~~
4 this title; and

5 7. "Validation effective time" with respect to any defective
6 corporate act ratified pursuant to this section means the latest of
7 (a) the time at which the defective act submitted to the
8 shareholders for approval pursuant to subsection C of this section
9 is approved by such shareholders, or if no such vote of shareholders
10 is required to approve the ratification, the time at which the board
11 of directors adopts the resolutions required by paragraphs 1 or 2 of
12 subsection B of this section, (b) where no certificate of validation
13 is required to be filed pursuant to subsection E of this section,
14 the time, if any, specified by the board of directors in the
15 resolutions adopted pursuant to paragraphs 1 or 2 of subsection B of
16 this section, which time shall not precede the time at which such
17 resolutions are adopted; and (c) the time at which any certificate
18 of validation filed pursuant to subsection E of this section shall
19 become effective in accordance with Section 1007 of ~~Title 18 of the~~
20 ~~Oklahoma Statutes~~ this title.

21 In the absence of actual fraud in the transaction, the judgment
22 of the board of directors that shares of stock are valid stock or
23 putative stock shall be conclusive, unless otherwise determined by
24

1 the District Court in a proceeding brought pursuant to Section ~~10 of~~
2 ~~this act~~ 1055.2 of this title.

3 I. Ratification under this section or validation under Section
4 ~~10 of this act~~ 1055.2 of this title shall not be deemed to be the
5 exclusive means of ratifying or validating any act or transaction
6 taken by or on behalf of the corporation, including any defective
7 corporate act, or any issuance of stock, including any putative
8 stock, or of adopting or endorsing any act or transaction taken by
9 or in the name of the corporation prior to the commencement of its
10 existence, and the absence or failure of ratification in accordance
11 with either this section or validation under Section ~~10 of this act~~
12 1055.2 of this title shall not, of itself, affect the validity or
13 effectiveness of any act or transaction or the issuance of any stock
14 properly ratified under common law or otherwise, nor shall it create
15 a presumption that any such act or transaction is or was a defective
16 corporate act or that such stock is void or voidable.

17 SECTION 7. AMENDATORY 18 O.S. 2011, Section 1064, as
18 amended by Section 14, Chapter 323, O.S.L. 2017 (18 O.S. Supp. 2019,
19 Section 1064), is amended to read as follows:

20 Section 1064.

21 LIST OF SHAREHOLDERS ENTITLED TO VOTE; PENALTY FOR REFUSAL TO
22 PRODUCE STOCK LEDGER

23 A. The ~~officer who has charge of the stock ledger of a~~
24 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

1 present. If the meeting is to be held solely by means of remote
2 communication, then the list shall also be open to the examination
3 of any shareholder during the whole time of the meeting on a
4 reasonably accessible electronic network, and the information
5 required to access the list shall be provided with the notice of the
6 meeting.

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

13 C. For the purposes of the Oklahoma General Corporation Act,
14 "stock ledger" means one or more records administered by or on
15 behalf of the corporation in which the names of all the
16 corporation's shareholders of record, the address and number of
17 shares registered in the name of each such shareholder, and all
18 issuances and transfers of stock of the corporation are recorded in
19 accordance with Section 1069 of this title. The stock ledger shall
20 be the only evidence as to who are the shareholders entitled by this
21 section to examine the list required by this section or to vote in
22 person or by proxy at any meeting of shareholders.

23 SECTION 8. AMENDATORY 18 O.S. 2011, Section 1069, is
24 amended to read as follows:

1 Section 1069.

2 FORM OF RECORDS

3 Any records ~~maintained~~ administered by or on behalf of a
4 corporation in the regular course of its business, including its
5 stock ledger, books of account, and minute books, may be kept on, or
6 by means of, or be in the form of, any information storage device,
7 ~~or~~ method or one or more electronic networks or databases, including
8 one or more distributed electronic networks or databases; provided
9 that the records so kept can be converted into clearly legible paper
10 form within a reasonable time, and, with respect to the stock
11 ledger, that the records so kept (i) can be used to prepare the list
12 of shareholders specified in Sections 1064 and 1065 of this title,
13 (ii) record the information specified in Sections 1037, 1040 and
14 1063, and subsection A of Section 1062 of this title, and (iii)
15 record transfers of stock as governed by Article 8 of the Uniform
16 Commercial Code. Any corporation shall ~~so~~ convert any records so
17 kept into clearly legible paper form upon the request of any person
18 entitled to inspect the records pursuant to any provision of the
19 Oklahoma General Corporation Act. Where records are kept in the
20 manner, a clearly legible paper form ~~produced~~ prepared from or by
21 means of the information storage device, ~~or~~ method shall be
22 admissible in evidence and shall be accepted for all other purposes,
23 to the same extent as an original paper record of the same
24

1 information would have been, when the paper form accurately portrays
2 the record.

3 SECTION 9. AMENDATORY 18 O.S. 2011, Section 1073, as
4 amended by Section 19, Chapter 323, O.S.L. 2017 (18 O.S. Supp. 2019,
5 Section 1073), is amended to read as follows:

6 Section 1073.

7 CONSENT OF SHAREHOLDERS IN LIEU OF MEETING

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

1 B. Unless otherwise provided for in the certificate of
2 incorporation, any action required by the provisions of the Oklahoma
3 General Corporation Act to be taken at a meeting of the members of a
4 nonstock corporation, or any action which may be taken at any
5 meeting of the members of a nonstock corporation, may be taken
6 without a meeting, without prior notice and without a vote, if a
7 consent or consents in writing, setting forth the action taken,
8 shall be signed by members having not less than the minimum number
9 of votes that would be necessary to authorize or take such action at
10 a meeting at which all members having a right to vote thereon were
11 present and voted and shall be delivered to the corporation by
12 delivery to its registered office in this state, its principal place
13 of business, or an officer or agent of the corporation having
14 custody of the book in which proceedings of meetings of shareholders
15 are recorded. Delivery made to a corporation's registered office
16 shall be by hand or by certified or registered mail, return receipt
17 requested.

18 C. 1. ~~A telegram, cablegram or other~~ An electronic
19 transmission consenting to an action to be taken and transmitted by
20 a shareholder, member or proxyholder, or by a person or persons
21 authorized to act for a shareholder, member or proxyholder, shall be
22 deemed to be written, and signed ~~and dated~~ for the purposes of this
23 section; provided that any ~~telegram, cablegram or other~~ electronic
24

1 transmission sets forth or is delivered with information from which
2 the corporation can determine:

3 a. that the ~~telegram, cablegram or other~~ electronic
4 transmission was transmitted by the shareholder,
5 member or proxyholder or by a person or persons
6 authorized to act for the shareholder, member or
7 proxyholder, and

8 b. the date on which the shareholder, member or
9 proxyholder or authorized person or persons
10 transmitted the ~~telegram, cablegram or~~ electronic
11 transmission.

12 ~~The date on which the telegram, cablegram or electronic~~
13 ~~transmission is transmitted shall be deemed to be the date on which~~
14 ~~the consent was signed. No consent given by telegram, cablegram or~~
15 ~~other electronic transmission shall be deemed to have been delivered~~
16 ~~until the consent is reproduced in paper form and until the paper~~
17 ~~form shall be delivered to the corporation by delivery to its~~
18 ~~registered office in this state, its principal place of business or~~
19 ~~an officer or agent of the corporation having custody of the book in~~
20 ~~which proceedings of meetings of shareholders or members are~~
21 ~~recorded. Delivery made to a corporation's registered office shall~~
22 ~~be made by hand or by certified or registered mail, return receipt~~
23 ~~requested. Notwithstanding the foregoing limitations on delivery,~~
24 ~~consents given by telegram, cablegram or other electronic~~

1 ~~transmission may be otherwise delivered to the principal place of~~
2 ~~business of the corporation or to an officer or agent of the~~
3 ~~corporation having custody of the book in which proceedings of~~
4 ~~meetings of shareholders or members are recorded if, to the extent~~
5 ~~and in the manner provided by resolution of the board of directors~~
6 ~~or governing body of the corporation.~~

7 2. A consent given by electronic transmission is delivered to
8 the corporation upon the earliest of:

- 9 a. when the consent enters an information processing
10 system, if any, designated by the corporation for
11 receiving consents, so long as the electronic
12 transmission is in a form capable of being processed
13 by that system and the corporation is able to retrieve
14 that electronic transmission,
- 15 b. when a paper reproduction of the consent is delivered
16 to the corporation's principal place of business or an
17 officer or agent of the corporation having custody of
18 the book in which proceedings of meetings of
19 stockholders or members are recorded,
- 20 c. when a paper reproduction of the consent is delivered
21 to the corporation's registered office in this state
22 by hand or by certified or registered mail, return
23 receipt requested, or
24

1 d. when delivered in such other manner, if any, provided
2 by resolution of the board of directors or governing
3 body of the corporation.

4 Whether the corporation has so designated an information processing
5 system to receive consents is determined by the certificate of
6 incorporation, the bylaws or from the context and surrounding
7 circumstances, including the conduct of the corporation. A consent
8 given by electronic transmission is delivered under this section even
9 if no person is aware of its receipt. Receipt of an electronic
10 acknowledgement from an information processing system establishes
11 that a consent given by electronic transmission was received but, by
12 itself, does not establish that the content sent corresponds to the
13 content received.

14 3. Any copy, facsimile or other reliable reproduction of a
15 consent in writing may be substituted or used in lieu of the
16 original writing for any and all purposes for which the original
17 writing could be used; provided that the copy, facsimile or other
18 reliable reproduction shall be a complete reproduction of the entire
19 original writing.

20 D. ~~Every written consent shall bear the date of signature of~~
21 ~~each shareholder or member who signs the consent and no~~ No written
22 consent shall be effective to take the corporate action referred to
23 therein unless, ~~within sixty (60) days of the earliest dated consent~~
24 ~~delivered in the manner required by this section to the corporation,~~

1 written consents signed by a sufficient number of holders or members
2 to take action are delivered to the corporation ~~by delivery to its~~
3 ~~registered office in this state, its principal place of business, or~~
4 ~~an officer or agent of the corporation having custody of the book in~~
5 ~~which proceedings of meetings of shareholders are recorded.~~

6 ~~Delivery made to a corporation's registered office shall be by hand~~
7 ~~or by certified or registered mail, return receipt requested in the~~
8 ~~manner required by this section within sixty (60) days of the first~~
9 ~~date on which a written consent is so delivered to the corporation.~~

10 Any person executing a consent may provide, whether through
11 instruction to an agent or otherwise, that such a consent will be
12 effective at a future time, including a time determined upon the
13 happening of an event, no later than sixty (60) days after such
14 instruction is given or such provision is made ~~and, for the purposes~~
15 ~~of this section,~~ if evidence of such instruction or provision is
16 provided to the corporation, ~~such later effective time shall serve~~
17 ~~as the date of signature.~~ Unless otherwise provided, any such
18 consent shall be revocable prior to its becoming effective.

19 E. Prompt notice of the taking of the corporate action without
20 a meeting by less than unanimous written consent shall be given to
21 those shareholders or members, as the case may be, who have not
22 consented in writing and who, if the action had been taken at a
23 meeting, would have been entitled to notice of the meeting if the
24 record date for notice of the meeting had been the date that written

1 consents signed by a sufficient number of shareholders or members to
2 take the action were delivered to the corporation as provided in
3 ~~subsection B~~ of this section. In the event that the action for
4 which consent is given is an action that would have required the
5 filing of a certificate under any other section of this title if the
6 action had been voted on by shareholders or by members at a meeting
7 thereof the certificate filed under the other section shall state,
8 in lieu of any statement required by the section concerning any vote
9 of shareholders or members, that written consent has been given in
10 accordance with the provisions of this section.

11 SECTION 10. AMENDATORY 18 O.S. 2011, Section 1075.2, as
12 amended by Section 14, Chapter 88, O.S.L. 2019 (18 O.S. Supp. 2019,
13 Section 1075.2), is amended to read as follows:

14 Section 1075.2.

15 ELECTRONIC NOTICE; EFFECTIVENESS; REVOCATION OF CONSENT

16 A. Without limiting the manner of which notice otherwise may be
17 given effectively to shareholders, any notice to shareholders given
18 by the corporation under any provision of the Oklahoma General
19 Corporation Act, the certificate of incorporation, or the bylaws
20 shall be effective if given by a form of electronic transmission
21 consented to by the shareholder to whom the notice is given. The
22 consent shall be revocable by the shareholder by written notice to
23 the corporation. The consent shall be deemed revoked if:
24

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

4 2. The inability becomes known to the secretary or an assistant
5 secretary of the corporation or to the transfer agent, or other
6 person responsible for the giving of notice; provided, however, the
7 inadvertent failure to treat the inability as a revocation shall not
8 invalidate any meeting or other action.

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

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

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

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

18 a. the posting, and

19 b. the giving of the separate notice; and

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

22 An affidavit of the secretary or an assistant secretary or of
23 the transfer agent or other agent of the corporation that the notice
24 has been given by a form of electronic transmission shall, in the

1 absence of fraud, be prima facie evidence of the facts stated
2 therein.

3 C. For purposes of the Oklahoma General Corporation Act,
4 "electronic transmission" means any form of communication, not
5 directly involving the physical transmission of paper, including the
6 use of, or participation in, one or more electronic networks or
7 databases, including one or more distributed electronic networks or
8 databases, that creates a record that may be retained, retrieved,
9 and reviewed by a recipient thereof, and that may be directly
10 reproduced in paper form by such a recipient through an automated
11 process.

12 D. This section shall not apply to Sections 1045 or 1111 of
13 this title.

14 SECTION 11. AMENDATORY 18 O.S. 2011, Section 1081, as
15 amended by Section 22, Chapter 323, O.S.L. 2017 (18 O.S. Supp. 2019,
16 Section 1081), is amended to read as follows:

17 Section 1081.

18 MERGER OR CONSOLIDATION OF DOMESTIC CORPORATIONS

19 A. Any two or more domestic corporations ~~existing under the~~
20 ~~laws of this state~~ may merge into a single surviving corporation,
21 which may be any one of the constituent corporations or may
22 consolidate into a new resulting corporation formed by the
23 consolidation, pursuant to an agreement of merger or consolidation,
24

1 as the case may be, complying and approved in accordance with the
2 provisions of this section.

3 B. The board of directors of each corporation which desires to
4 merge or consolidate shall adopt a resolution approving an agreement
5 of merger or consolidation and declaring its advisability. The
6 agreement shall state:

7 1. The terms and conditions of the merger or consolidation;

8 2. The mode of carrying the same into effect;

9 3. In the case of a merger, the amendments or changes in the
10 certificate of incorporation of the surviving corporation as are
11 desired to be effected by the merger, which amendments or changes
12 may amend and restate the certificate of incorporation of the
13 surviving corporation in its entirety, or, if no amendments or
14 changes are desired, a statement that the certificate of
15 incorporation of the surviving corporation shall be its certificate
16 of incorporation of the surviving or resulting corporation;

17 4. In the case of a consolidation, that the certificate of
18 incorporation of the resulting corporation shall be as is set forth
19 in an attachment to the agreement;

20 5. The manner, if any, of converting the shares of each of the
21 constituent corporations into shares or other securities of the
22 corporation surviving or resulting from the merger or consolidation,
23 or of canceling some or all of the shares, and, if any shares of any
24 of the constituent corporations are not to remain outstanding, to be

1 converted solely into shares or other securities of the surviving or
2 resulting corporation or to be canceled, the cash, property, rights,
3 or securities of any other corporation or entity which the holders
4 of the shares are to receive in exchange for or upon conversion of
5 the shares and the surrender of any certificates evidencing them,
6 which cash, property, rights, or securities of any other corporation
7 or entity may be in addition to or in lieu of shares or other
8 securities of the surviving or resulting corporation; and

9 6. Other details or provisions as are deemed desirable,
10 including without limiting the generality of the foregoing, a
11 provision for the payment of cash in lieu of the issuance or
12 recognition of fractional shares, ~~interests or rights~~ or other
13 securities of the surviving or resulting corporation or of any other
14 corporation or entity the shares, rights or other securities of
15 which are to be received in the merger or consolidation, or for any
16 other arrangement with respect thereto, consistent with the
17 provisions of Section 1036 of this title. The agreement so adopted
18 shall be executed and acknowledged in accordance with the provisions
19 of Section 1007 of this title. Any of the terms of the agreement of
20 merger or consolidation may be made dependent upon facts
21 ascertainable outside of the agreement; provided, that the manner in
22 which these facts shall operate upon the terms of the agreement is
23 clearly and expressly set forth in the agreement of merger or
24 consolidation. The term "facts" as used in this paragraph,

1 includes, but is not limited to, the occurrence of any event,
2 including a determination or action by any person or body, including
3 the corporation.

4 C. The agreement required by the provisions of subsection B of
5 this section shall be submitted to the shareholders of each
6 constituent corporation at an annual or special meeting thereof for
7 the purpose of acting on the agreement. Due notice of the time,
8 place, and purpose of the meeting shall be mailed to each holder of
9 stock whether voting or nonvoting, of the corporation at the address
10 which appears on the records of the corporation, at least twenty
11 (20) days before the date of the meeting. The notice shall contain
12 a copy of the agreement or a brief summary thereof; provided,
13 however, the notice shall be effective only with respect to mergers
14 or consolidations for which the notice of the shareholders meeting
15 to vote thereon has been mailed after November 1, 1988. At the
16 meeting the agreement shall be considered and a vote taken for its
17 adoption or rejection. If a majority of the outstanding stock of
18 the corporation entitled to vote thereon shall be voted for the
19 adoption of the agreement, that fact shall be certified on the
20 agreement by the secretary or the assistant secretary of the
21 corporation; provided, that such certification on the agreement
22 shall not be required if a certificate of merger or consolidation is
23 filed in lieu of filing the agreement. If the agreement shall be so
24 adopted and certified by each constituent corporation, it shall then

1 be filed and shall become effective in accordance with the
2 provisions of Section 1007 of this title. In lieu of filing an
3 agreement of merger or consolidation required by this section, the
4 surviving or resulting corporation may file a certificate of merger
5 or consolidation executed in accordance with the provisions of
6 Section 1007 of this title and which states:

7 1. The name and state of incorporation of each of the
8 constituent corporations;

9 2. That an agreement of merger or consolidation has been
10 approved, adopted, executed, and acknowledged by each of the
11 constituent corporations in accordance with the provisions of this
12 section;

13 3. The name of the surviving or resulting corporation;

14 4. In the case of a merger, the amendments or changes in the
15 certificate of incorporation of the surviving corporation, which may
16 be amended and restated, that are desired to be effected by the
17 merger, which amendments or changes may amend and restate the
18 certificate of incorporation of the surviving corporation in its
19 entirety, or, if no amendments or changes are desired, a statement
20 that the certificate of incorporation of the surviving corporation
21 shall be its certificate of incorporation;

22 5. In the case of a consolidation, that the certificate of
23 incorporation of the resulting corporation shall be as is set forth
24 in an attachment to the certificate;

1 6. That the executed agreement of consolidation or merger is on
2 file at the principal place of business of the surviving or
3 resulting corporation, stating the address thereof; and

4 7. That a copy of the agreement of consolidation or merger will
5 be furnished by the surviving or resulting corporation, on request
6 and without cost, to any shareholder of any constituent corporation.
7 For purposes of Sections 1084 and 1086 of this title, the term
8 "shareholder" shall be deemed to include "member".

9 D. Any agreement of merger or consolidation may contain a
10 provision that at any time prior to the time that the agreement, or
11 a certificate filed with the Secretary of State in lieu thereof,
12 becomes effective in accordance with Section 1007 of this title, the
13 agreement may be terminated by the board of directors of any
14 constituent corporation notwithstanding approval of the agreement by
15 the shareholders of all or any of the constituent corporations;
16 provided, if the agreement of merger or consolidation is terminated
17 after the filing of the agreement, or a certificate filed with the
18 Secretary of State in lieu thereof, but before the agreement or
19 certificate has become effective, a certificate of termination of
20 merger or consolidation shall be filed in accordance with Section
21 1007 of this title. Any agreement of merger or consolidation may
22 contain a provision that the boards of directors of the constituent
23 corporations may amend the agreement at any time prior to the time
24 that the agreement, or a certificate filed with the Secretary of

1 State in lieu thereof, becomes effective in accordance with Section
2 1007 of this title; provided, that an amendment made subsequent to
3 the adoption of the agreement by the shareholders of any constituent
4 corporation shall not:

5 1. Alter or change the amount or kind of shares, securities,
6 cash, property, or rights to be received in exchange for or on
7 conversion of all or any of the shares of any class or series
8 thereof of the constituent corporation;

9 2. Alter or change any term of the certificate of incorporation
10 of the surviving corporation to be effected by the merger or
11 consolidation; or

12 3. Alter or change any of the terms and conditions of the
13 agreement if an alteration or change would adversely affect the
14 holders of any class or series thereof of the constituent
15 corporation.

16 If the agreement of merger or consolidation is amended after the
17 filing of the agreement, or a certificate in lieu thereof, with the
18 Secretary of State, but before the agreement or certificate has
19 become effective, a certificate of amendment of merger or
20 consolidation shall be filed in accordance with Section 1007 of this
21 title.

22 E. In the case of a merger, the certificate of incorporation of
23 the surviving corporation shall automatically be amended to the
24

1 extent, if any, that changes in the certificate of incorporation are
2 set forth in the certificate of merger.

3 F. Notwithstanding the requirements of subsection C of this
4 section, unless required by its certificate of incorporation, no
5 vote of shareholders of a constituent corporation surviving a merger
6 shall be necessary to authorize a merger if:

7 1. The agreement of merger does not amend in any respect the
8 certificate of incorporation of the constituent corporation;

9 2. Each share of stock of the constituent corporation
10 outstanding immediately prior to the effective date of the merger is
11 to be an identical outstanding or treasury share of the surviving
12 corporation after the effective date of the merger; and

13 3. Either no shares of common stock of the surviving
14 corporation and no shares, securities, or obligations convertible
15 into such stock are to be issued or delivered under the plan of
16 merger, or the authorized unissued shares or the treasury shares of
17 common stock of the surviving corporation to be issued or delivered
18 under the plan of merger plus those initially issuable upon
19 conversion of any other shares, securities, or obligations to be
20 issued or delivered under the plan do not exceed twenty percent
21 (20%) of the shares of common stock of the constituent corporation
22 outstanding immediately prior to the effective date of the merger.
23 No vote of shareholders of a constituent corporation shall be
24 necessary to authorize a merger or consolidation if no shares of the

1 stock of the corporation shall have been issued prior to the
2 adoption by the board of directors of the resolution approving the
3 agreement of merger or consolidation. If an agreement of merger is
4 adopted by the constituent corporation surviving the merger, by
5 action of its board of directors and without any vote of its
6 shareholders pursuant to the provisions of this subsection, the
7 secretary or assistant secretary of that corporation shall certify
8 on the agreement that the agreement has been adopted pursuant to the
9 provisions of this subsection and:

- 10 a. if it has been adopted pursuant to paragraph 1 of this
11 subsection, that the conditions specified have been
12 satisfied, or
- 13 b. if it has been adopted pursuant to paragraph 2 of this
14 subsection, that no shares of stock of the corporation
15 were issued prior to the adoption by the board of
16 directors of the resolution approving the agreement of
17 merger or consolidation; provided, that such
18 certification on the agreement shall not be required
19 if a certificate of merger or consolidation is filed
20 in lieu of filing the agreement.

21 The agreement so adopted and certified shall then be filed and
22 shall become effective in accordance with the provisions of Section
23 1007 of this title. Filing shall constitute a representation by the
24

1 person who executes the certificate that the facts stated in the
2 certificate remain true immediately prior to filing.

3 G. 1. Notwithstanding the requirements of subsection C of this
4 section, unless expressly required by its certificate of
5 incorporation, no vote of shareholders of a constituent corporation
6 shall be necessary to authorize a merger with or into a single
7 direct or indirect wholly owned subsidiary of the constituent
8 corporation if:

9 a. the constituent corporation and the direct or indirect
10 wholly owned subsidiary of the constituent corporation
11 are the only constituent entities to the merger,

12 b. each share or fraction of a share of the capital stock
13 of the constituent corporation outstanding immediately
14 before the effective time of the merger is converted
15 in the merger into a share or equal fraction of share
16 of capital stock of a holding company having the same
17 designations, rights, powers, and preferences, and the
18 qualifications, limitations, and restrictions thereof,
19 as the share of stock of the constituent corporation
20 being converted in the merger,

21 c. the holding company and the constituent corporation
22 are domestic corporations ~~of this state~~ and the direct
23 or indirect wholly owned subsidiary that is the other
24 constituent entity to the merger is a domestic

1 corporation or limited liability company ~~of this~~
2 state,

3 d. the certificate of incorporation and bylaws of the
4 holding company immediately following the effective
5 time of the merger contain provisions identical to the
6 certificate of incorporation and bylaws of the
7 constituent corporation immediately before the
8 effective time of the merger, other than provisions,
9 if any, regarding the incorporator or incorporators,
10 the corporate name, the registered office and agent,
11 the initial board of directors, and the initial
12 subscribers of shares and provisions contained in any
13 amendment to the certificate of incorporation as were
14 necessary to effect a change, exchange,
15 reclassification, subdivision, combination or
16 cancellation of stock, if a change, exchange,
17 reclassification, or cancellation has become
18 effective,

19 e. as a result of the merger, the constituent corporation
20 or its successor corporation becomes or remains a
21 direct or indirect wholly owned subsidiary of the
22 holding company,
23
24

- 1 f. the directors of the constituent corporation become or
2 remain the directors of the holding company upon the
3 effective time of the merger,
- 4 g. the organizational documents of the surviving entity
5 immediately following the effective time of the merger
6 contain provisions identical to the certificate of
7 incorporation of the constituent corporation
8 immediately before the effective time of the merger,
9 other than provisions, if any, regarding the
10 incorporator or incorporators, the corporate or entity
11 name, the registered office and agent, the initial
12 board of directors and the initial subscribers for
13 shares, references to members rather than
14 shareholders, references to interests, units or the
15 like rather than stock or shares, references to
16 managers, managing members or other members of the
17 governing body rather than directors and such
18 provisions contained in any amendment to the
19 certificate of incorporation as were necessary to
20 effect a change, exchange, reclassification,
21 subdivision, combination or cancellation of stock, if
22 such change, exchange, reclassification, subdivision,
23 combination or cancellation has become effective;
24 provided, however, that:

1 (1) if the organizational documents of the surviving
2 entity do not contain the following provisions,
3 they shall be amended in the merger to contain
4 provisions requiring that:

5 (a) any act or transaction by or involving the
6 surviving entity, other than the election or
7 removal of directors or managers, managing
8 members or other members of the governing
9 body of the surviving entity, that requires
10 for its adoption under ~~this act~~ the Oklahoma
11 General Corporation Act or its
12 organizational documents the approval of the
13 shareholders or members of the surviving
14 entity shall, by specific reference to this
15 subsection, require, in addition, the
16 approval of the shareholders of the holding
17 company (or any successor by merger), by the
18 same vote as is required by ~~this act~~ the
19 Oklahoma General Corporation Act and/or by
20 the organizational documents of the
21 surviving entity; provided, however, that
22 for purposes of this subdivision, any
23 surviving entity that is not a corporation
24 shall include in such amendment a

1 requirement that the approval of the
2 shareholders of the holding company be
3 obtained for any act or transaction by or
4 involving the surviving entity, other than
5 the election or removal of directors or
6 managers, managing members or other members
7 of the governing body of the surviving
8 entity, which would require the approval of
9 the shareholders of the surviving entity if
10 the surviving entity were a corporation
11 subject to ~~this act~~ the Oklahoma General
12 Corporation Act,

13 (b) any amendment of the organizational
14 documents of a surviving entity that is not
15 a corporation, which amendment would, if
16 adopted by a corporation subject to ~~this act~~
17 the Oklahoma General Corporation Act, be
18 required to be included in the certificate
19 of incorporation of such corporation, shall,
20 by specific reference to this subsection,
21 require, in addition, the approval of the
22 shareholders of the holding company, or any
23 successor by merger, by the same vote as is
24 required by ~~this act~~ the Oklahoma General

1 Corporation Act and/or by the organizational
2 documents of the surviving entity, and

3 (c) the business and affairs of a surviving
4 entity that is not a corporation shall be
5 managed by or under the direction of a board
6 of directors, board of managers or other
7 governing body consisting of individuals who
8 are subject to the same fiduciary duties
9 applicable to, and who are liable for breach
10 of such duties to the same extent as,
11 directors of a corporation subject to ~~this~~
12 ~~act~~ the Oklahoma General Corporation Act,
13 and

14 (2) the organizational documents of the surviving
15 entity may be amended in the merger:

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

20 (b) to eliminate any provision authorized by
21 subsection D of Section 1027 of this title;
22 and

23 h. the shareholders of the constituent corporation do not
24 recognize gain or loss for federal income tax purposes

1 as determined by the board of directors of the
2 constituent corporation.

3 Neither division (1) of subparagraph g of paragraph 1 of this
4 subsection nor any provision of a surviving entity's organizational
5 documents required by division (1) of subparagraph g of paragraph 1
6 of this subsection shall be deemed or construed to require approval
7 of the shareholders of the holding company to elect or remove
8 directors or managers, managing members or other members of the
9 governing body of the surviving entity.

10 2. As used in this subsection, the term "holding company" means
11 a corporation which, from its incorporation until consummation of a
12 merger governed by this subsection, was at all times a direct or
13 indirect wholly owned subsidiary of the constituent corporation and
14 whose capital stock is issued in a merger.

15 3. As used in this subsection, the term "organizational
16 documents" means, when used in reference to a corporation, the
17 certificate of incorporation of the corporation and, when used in
18 reference to a limited liability company, the articles of
19 organization and the operating agreement of the limited liability
20 company.

21 4. From and after the effective time of a merger adopted by a
22 constituent corporation by action of its board of directors and
23 without any vote of shareholders pursuant to this subsection:
24

- 1 a. to the extent the restriction of Section 1090.3 of
2 this title applied to the constituent corporation and
3 its shareholders at the effective time of the merger,
4 restrictions shall apply to the holding company and
5 its shareholders immediately after the effective time
6 of the merger as though it were the constituent
7 corporation, and all shareholders of stock of the
8 holding company acquired in the merger shall for
9 purposes of Section 1090.3 of this title be deemed to
10 have been acquired at the time that the shares of
11 stock of the constituent corporation converted in the
12 merger were acquired; provided, that any shareholder
13 who immediately before the effective time of the
14 merger was not an interested shareholder within the
15 meaning of Section 1090.3 of this title shall not
16 solely by reason of the merger become an interested
17 shareholder of the holding company,
- 18 b. if the corporate name of the holding company
19 immediately following the effective time of the merger
20 is the same as the corporate name of the constituent
21 corporation immediately before the effective time of
22 the merger, the shares of capital stock of the holding
23 company into which the shares of capital stock of the
24 constituent corporation are converted in the merger

1 shall be represented by the stock certificates that
2 previously represented the shares of capital stock of
3 the constituent corporation, and

4 c. to the extent a shareholder of the constituent
5 corporation immediately before the merger had standing
6 to institute or maintain derivative litigation on
7 behalf of the constituent corporation, nothing in this
8 section shall be deemed to limit or extinguish such
9 standing.

10 5. If any agreement of merger is adopted by a constituent
11 corporation by action of its board of directors and without any vote
12 of shareholders pursuant to this subsection, the secretary or
13 assistant secretary of the constituent corporation shall certify on
14 the agreement that the agreement has been adopted pursuant to this
15 subsection and that the conditions specified in paragraph 1 of this
16 subsection have been satisfied; provided, that such certification on
17 the agreement shall not be required if a certificate of merger or
18 consolidation is filed in lieu of filing the agreement. The
19 agreement so adopted and certified shall then be filed and become
20 effective in accordance with Section 1007 of this title. Filing
21 shall constitute a representation by the person who executes the
22 agreement that the facts stated in the certificate remain true
23 immediately before the filing.

1 H. Notwithstanding the requirements of subsection C of this
2 section, unless expressly required by its certificate of
3 incorporation, no vote of shareholders of a constituent corporation
4 that has a class or series of stock that is listed on a national
5 securities exchange or held of record by more than two thousand
6 holders immediately prior to the execution of the agreement of
7 merger by such constituent corporation shall be necessary to
8 authorize a merger if:

9 1. The agreement of merger expressly (a) permits or requires
10 such merger to be effected under this subsection and (b) provides
11 that such merger shall be effected as soon as practicable following
12 the consummation of the offer referred to in paragraph 2 of this
13 subsection if such merger is effected under this subsection;

14 2. A corporation consummates an offer for all of the
15 outstanding stock of such constituent corporation on the terms
16 provided in such agreement of merger that, absent this subsection,
17 would be entitled to vote on the adoption or rejection of the
18 agreement of merger; provided, however, that such offer may be
19 conditioned on the tender of a minimum number or percentage of
20 shares of the stock of such constituent corporation, or of any
21 class or series thereof, and such offer may exclude any excluded
22 stock; and provided further, that the corporation may consummate
23 separate offers for separate classes or series of the stock of such
24 constituent corporation;

1 3. Immediately following the consummation of the offer referred
2 to in paragraph 2 of this subsection, the stock irrevocably accepted
3 for purchase or exchange pursuant to such offer and received by the
4 depository prior to expiration of such offer, together with the
5 stock otherwise owned by the consummating corporation or its
6 affiliates and any rollover stock, equals at least such percentage
7 of the shares of stock of such constituent corporation, and of each
8 class or series thereof, that, absent this subsection, would be
9 required to adopt the agreement of merger by this chapter and by the
10 certificate of incorporation of such constituent corporation;

11 4. The corporation consummating the offer referred to in
12 paragraph 2 of this subsection merges with or into such constituent
13 corporation pursuant to such agreement;

14 5. Each outstanding share, other than shares of excluded stock,
15 of each class or series of stock of the constituent corporation that
16 is the subject of and not irrevocably accepted for purchase or
17 exchange in the offer referred to in paragraph 2 of this subsection
18 is to be converted in such merger into, or into the right to
19 receive, the same amount and kind of cash, property, rights or
20 securities paid for shares of such class or series of stock of such
21 constituent corporation irrevocably accepted for purchase or
22 exchange in such offer; and

23 6. As used in this subsection only, the term:
24

- 1 a. "affiliate" means, in respect of the corporation
2 making the offer referred to in paragraph 2 of this
3 subsection, any person that (1) owns, directly or
4 indirectly, all of the outstanding stock of such
5 corporation or (2) is a direct or indirect wholly
6 owned subsidiary of such corporation or of any person
7 referred to in proviso (1) of this subparagraph,
- 8 b. "consummates", and with correlative meaning,
9 "consummation" and "consummating", means irrevocably
10 accepts for purchase or exchange stock tendered
11 pursuant to an offer,
- 12 c. "depository" means an agent, including a depository,
13 appointed to facilitate consummation of the offer
14 referred to in paragraph 2 of this subsection,
- 15 d. "excluded stock" means (1) stock of such constituent
16 corporation that is owned at the commencement of the
17 offer referred to in paragraph 2 of this subsection by
18 such constituent corporation, the corporation making
19 the offer referred to in paragraph 2 of this
20 subsection, any person that owns, directly or
21 indirectly, all of the outstanding stock of the
22 corporation making such offer, or any direct or
23 indirect wholly owned subsidiary of any of the
24 foregoing and (2) rollover stock,

1 e. "person" means any individual, corporation,
2 partnership, limited liability company, unincorporated
3 association or other entity,
4 f. "received" solely for purposes of paragraph 3 of this
5 subsection means (1) with respect to certificated
6 shares, physical receipt of a stock certificate
7 accompanied by an executed letter of transmittal, (2)
8 with respect to uncertificated shares held of record
9 by a clearing corporation as nominee, transfer into
10 the depository's account by means of an agent's
11 message, and (3) with respect to uncertificated shares
12 held of record by a person other than a clearing
13 corporation as nominee, physical receipt of an
14 executed letter of transmittal by the depository;
15 provided, however, that shares shall cease to be
16 "received" (4) with respect to certificated shares, if
17 the certificate representing such shares was canceled
18 prior to consummation of the offer referred to in
19 paragraph 2 of this subsection, or (5) with respect
20 to uncertificated shares, to the extent such
21 uncertificated shares have been reduced or eliminated
22 due to any sale of such shares prior to consummation
23 of the offer referred to in paragraph 2 of this
24 subsection, and

1 g. "rollover stock" means any shares of stock of such
2 constituent corporation that are the subject of a
3 written agreement requiring such shares to be
4 transferred, contributed or delivered to the
5 consummating corporation or any of its affiliates in
6 exchange for stock or other equity interests in such
7 consummating corporation or an affiliate thereof;
8 provided, however, that such shares of stock shall
9 cease to be rollover stock for purposes of paragraph 3
10 of this subsection if, immediately prior to the time
11 the merger becomes effective under this chapter, such
12 shares have not been transferred, contributed or
13 delivered to the consummating corporation or any of
14 its affiliates pursuant to such written agreement.

15 If an agreement of merger is adopted without the vote of
16 shareholders of a corporation pursuant to this subsection, the
17 secretary or assistant secretary of the surviving corporation shall
18 certify on the agreement that the agreement has been adopted
19 pursuant to this subsection and that the conditions specified in
20 this subsection, other than the condition listed in paragraph 4 of
21 this subsection, have been satisfied; provided, that such
22 certification on the agreement shall not be required if a
23 certificate of merger is filed in lieu of filing the agreement. The
24 agreement so adopted and certified shall then be filed and shall

1 become effective, in accordance with Section 1007 of this title.
2 Such filing shall constitute a representation by the person who
3 executes the agreement that the facts stated in the certificate
4 remain true immediately prior to such filing.

5 SECTION 12. AMENDATORY 18 O.S. 2011, Section 1082, as
6 amended by Section 23, Chapter 323, O.S.L. 2017 (18 O.S. Supp. 2019,
7 Section 1082), is amended to read as follows:

8 Section 1082.

9 MERGER OR CONSOLIDATION OF DOMESTIC AND FOREIGN CORPORATIONS;

10 SERVICE OF PROCESS UPON SURVIVING OR RESULTING CORPORATION

11 A. Any one or more domestic corporations ~~of this state~~ may
12 merge or consolidate with one or more ~~other corporations of any~~
13 ~~other state or states of the United States, or of the District of~~
14 ~~Columbia, if the laws of the other state or states or of the~~
15 ~~District permit a corporation of the jurisdiction to merge or~~
16 ~~consolidate with a corporation of another jurisdiction~~ foreign
17 corporations, unless the laws of the jurisdiction or jurisdictions
18 under which such foreign corporation or corporations are organized
19 prohibit the merger or consolidation. The constituent corporations
20 may merge into a single surviving corporation, which may be any one
21 of the constituent corporations, or they may consolidate into a new
22 resulting corporation formed by the consolidation, which may be a
23 corporation of the ~~state of incorporation~~ jurisdiction of
24 organization of any one of the constituent corporations, pursuant to

1 an agreement of merger or consolidation, as the case may be,
2 complying and approved in accordance with the provisions of this
3 section. ~~In addition, any one or more corporations organized under~~
4 ~~the laws of any jurisdiction other than one of the United States may~~
5 ~~merge or consolidate with one or more corporations existing under~~
6 ~~the laws of this state if the surviving or resulting corporation~~
7 ~~will be a corporation of this state, and if the laws under which the~~
8 ~~other corporation or corporations are formed permit a corporation of~~
9 ~~that jurisdiction to merge or consolidate with a corporation of~~
10 ~~another jurisdiction.~~

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

13 1. The terms and conditions of the merger or consolidation;

14 2. The mode of carrying the same into effect;

15 3. In the case of a merger in which the surviving corporation

16 is a domestic corporation, such amendments or changes in the

17 certificate of incorporation of the surviving corporation as are

18 desired to be effected by the merger, which amendments or changes

19 may amend and restate the certificate of incorporation of the

20 surviving corporation in its entirety, or, if no such amendments or

21 changes are desired, a statement that the certificate of

22 incorporation of the surviving corporation shall be its certificate

23 of incorporation;

24

1 4. In the case of a consolidation in which the resulting
2 corporation is a domestic corporation, that the certificate of
3 incorporation of the resulting corporation shall be as is set forth
4 in an attachment to the agreement;

5 5. The manner, if any, of converting the shares of each of the
6 constituent corporations into shares or other securities of the
7 corporation surviving or resulting from the merger or consolidation,
8 or of canceling some or all of the shares, and, if any shares of any
9 of the constituent corporations are not to remain outstanding, to be
10 converted solely into shares or other securities of the surviving or
11 resulting corporation or to be canceled, the cash, property, rights,
12 or securities of any other corporation or entity which the holder of
13 the shares is to receive in exchange for, or upon conversion of, the
14 shares and the surrender of any certificates evidencing them, which
15 cash, property, rights, or securities of any other corporation or
16 entity may be in addition to or in lieu of the shares or other
17 securities of the surviving or resulting corporation;

18 ~~4.~~ 6. Other details or provisions as are deemed desirable,
19 including, without limiting the generality of the foregoing, a
20 provision for the payment of cash in lieu of the issuance or
21 recognition of fractional shares, rights or other securities of the
22 surviving or resulting corporation or of any other corporation or
23 entity, the shares, rights or other securities of which are to be
24 received in the merger or consolidation, or for some other

1 arrangement with respect thereto consistent with the provisions of
2 Section 1036 of this title; and

3 ~~5.~~ 7. Other provisions or facts as shall be required to be set
4 forth in ~~the certificate of incorporation by the laws of the state~~
5 ~~which are stated in the agreement to be the laws that shall govern~~
6 ~~the~~ an agreement of merger or consolidation, including any provision
7 for amendment of the certificate of incorporation or equivalent
8 document, of a surviving or resulting corporation and that can be
9 stated in the case of a merger or consolidation. Any of the terms
10 of the agreement of merger or consolidation may be made dependent
11 upon facts ascertainable outside of the agreement; provided, that
12 the manner in which the facts shall operate upon the terms of the
13 agreement is clearly and expressly set forth in the agreement of
14 merger or consolidation. The term "facts" as used in this
15 paragraph, includes, but is not limited to, the occurrence of any
16 event, including a determination or action by any person or body,
17 including the corporation.

18 C. The agreement shall be adopted, approved, executed, and
19 acknowledged by each of the constituent corporations in accordance
20 with the laws under which it is ~~formed~~ organized, and, in the case
21 of ~~an Oklahoma~~ a domestic corporation, in the same manner as is
22 provided for in Section 1081 of this title. The agreement shall be
23 filed and shall become effective for all purposes of the laws of
24 this state when and as provided for in Section 1081 of this title

1 with respect to the merger or consolidation of domestic corporations
2 ~~of this state~~. In lieu of filing the agreement of merger or
3 consolidation, the surviving or resulting corporation may file a
4 certificate of merger or consolidation executed in accordance with
5 the provisions of Section 1007 of this title, which states:

6 1. The name and ~~state~~ jurisdiction of ~~incorporation~~
7 organization of each of the constituent corporations;

8 2. That an agreement of merger or consolidation has been
9 approved, adopted, executed, and acknowledged by each of the
10 constituent corporations in accordance with the provisions of this
11 subsection;

12 3. The name of the surviving or resulting corporation;

13 4. In the case of a merger in which the surviving corporation
14 is a domestic corporation, the amendments or changes in the
15 certificate of incorporation of the surviving corporation, which may
16 be amended and restated, that are effected by the merger, which
17 amendments or changes may amend and restate the certificate of
18 incorporation of the surviving corporation in its entirety, or, if
19 no amendments or changes are desired, a statement that the
20 certificate of incorporation of the surviving corporation shall be
21 its certificate of incorporation;

22 5. In the case of a consolidation in which the resulting
23 corporation is a domestic corporation, that the certificate of
24

1 incorporation of the resulting corporation shall be as is set forth
2 in an attachment to the certificate;

3 6. That the executed agreement of consolidation or merger is on
4 file at the principal place of business of the surviving or
5 resulting corporation, and the address thereof;

6 7. That a copy of the agreement of consolidation or merger will
7 be furnished by the surviving or resulting corporation, on request
8 and without cost, to any shareholder of any constituent corporation;

9 8. If the corporation surviving or resulting from the merger or
10 consolidation is ~~to be~~ a domestic corporation, the authorized
11 capital stock of each constituent corporation which is not a
12 domestic corporation; and

13 9. The agreement, if any, required by the provisions of
14 subsection D of this section. For purposes of Section 1085 of this
15 title, the term "shareholder" in subsection D of this section shall
16 be deemed to include "member".

17 D. If the corporation surviving or resulting from the merger or
18 consolidation is ~~to be governed by the laws of the District of~~
19 ~~Columbia or any state other than this state~~ a foreign corporation,
20 it shall agree that it may be served with process in this state in
21 any proceeding for enforcement of any obligation of any constituent
22 corporation of this state, as well as for enforcement of any
23 obligation of the surviving or resulting corporation arising from
24 the merger or consolidation, including any suit or other proceeding

1 to enforce the right of any shareholders as determined in appraisal
2 proceedings pursuant to the provisions of Section 1091 of this
3 title, and shall irrevocably appoint the Secretary of State as its
4 agent to accept service of process in any suit or other proceedings
5 and shall specify the address to which a copy of process shall be
6 mailed by the Secretary of State. In the event of service upon the
7 Secretary of State in accordance with the provisions of Section 2004
8 of Title 12 of the Oklahoma Statutes, the Secretary of State shall
9 immediately notify the surviving or resulting corporation thereof by
10 letter, certified mail, return receipt requested, directed to the
11 surviving or resulting corporation at the address specified unless
12 the surviving or resulting corporation shall have designated in
13 writing to the Secretary of State a different address for this
14 purpose, in which case it shall be mailed to the last address so
15 designated. The notice shall include a copy of the process and any
16 other papers served on the Secretary of State pursuant to the
17 provisions of this subsection. It shall be the duty of the
18 plaintiff in the event of such service to serve process and any
19 other papers in duplicate, to notify the Secretary of State that
20 service is being effected pursuant to the provisions of this
21 subsection, and to pay the Secretary of State the fee provided for
22 in paragraph 7 of subsection A of Section 1142 of this title, which
23 fee shall be taxed as part of the costs in the proceeding. The
24 Secretary of State shall maintain an alphabetical record of any such

1 service setting forth the name of the plaintiff and the defendant,
2 the title, docket number, and nature of the proceeding in which
3 process has been served upon the Secretary of State, the fact that
4 service has been effected pursuant to the provisions of this
5 subsection, the return date thereof, and the date service was made.
6 The Secretary of State shall not be required to retain such
7 information longer than five (5) years from receipt of the service
8 of process by the Secretary of State.

9 E. The provisions of subsection D of Section 1081 of this title
10 shall apply to any merger or consolidation pursuant to the
11 provisions of this section. The provisions of subsection E of
12 Section 1081 of this title shall apply to a merger pursuant to the
13 provisions of this section in which the surviving corporation is a
14 domestic corporation ~~of this state~~. The provisions of subsections F
15 and H of Section 1081 of this title shall apply to any merger
16 pursuant to the provisions of this section.

17 SECTION 13. AMENDATORY Section 24, Chapter 323, O.S.L.
18 2017 (18 O.S. Supp. 2019, Section 1083.1), is amended to read as
19 follows:

20 Section 1083.1.

21 MERGER OF PARENT ENTITY AND SUBSIDIARY
22 CORPORATION OR CORPORATIONS

23 A. In any case in which:
24

1 1. At least ninety percent (90%) of the outstanding shares of
2 each class of the stock of a corporation or corporations, other
3 than a corporation which has in its certificate of incorporation
4 the provision required by division (1) of subparagraph g of
5 paragraph 1 of subsection G of Section 1081 of ~~Title 18 of the~~
6 ~~Oklahoma Statutes~~ this title, of which class there are outstanding
7 shares that, absent this subsection, would be entitled to vote on
8 such merger, is owned by an entity; and

9 2. One or more of such corporations is a domestic
10 corporation ~~of this state; and~~

11 ~~3. Any entity or corporation that is not an entity or~~
12 ~~corporation of this state is an entity or corporation of any~~
13 ~~other state or the District of Columbia, the laws of which do not~~
14 ~~forbid such merger.~~ Unless the laws of the jurisdiction or
15 jurisdictions under which such entity or such foreign corporations
16 are formed or organized prohibit such merger, the entity having such
17 stock ownership may either merge the corporation or corporations
18 into itself and assume all of its or their obligations, or merge
19 itself, or itself and one or more of such corporations, into one
20 of the other corporations by:

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

1 b. acknowledging and filing with the Secretary of
2 State, in accordance with Section 1007 of ~~Title 18~~
3 ~~of the Oklahoma Statutes~~ this title, a certificate of
4 such ownership and merger certifying:

5 (1) that such merger was authorized in accordance
6 with such entity's governing documents and the
7 laws of the jurisdiction under which such
8 entity is formed or organized, such certificate
9 executed in accordance with such entity's
10 governing documents and in accordance with the
11 laws of the jurisdiction under which such
12 entity is formed or organized, and

13 (2) the type of entity of each constituent entity
14 to the merger; provided, however, that in case
15 the entity shall not own all the outstanding
16 stock of all the corporations, parties to a
17 merger as aforesaid:

18 (a) the certificate of ownership and merger
19 shall state the terms and conditions of
20 the merger, including the securities,
21 cash, property, or rights to be issued,
22 paid, delivered or granted by the
23 surviving constituent party upon
24 surrender of each share of the

1 corporation or corporations not owned by
2 the entity, or the cancellation of some or
3 all of such shares, and

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

11 Any of the terms of the merger may be made dependent upon facts
12 ascertainable outside of the certificate of ownership and merger,
13 provided that the manner in which such facts shall operate upon the
14 terms of the merger is clearly and expressly set forth in the
15 certificate of ownership and merger. The term "facts", as used in
16 the preceding sentence, includes, but is not limited to, the
17 occurrence of any event including a determination or action by any
18 person or body, including the entity. If the surviving constituent
19 party ~~exists under the laws of the District of Columbia or any state~~
20 ~~or~~ is an entity formed or organized under the laws of a jurisdiction
21 other than this state, subsection D of Section 1082 of ~~Title 18 of~~
22 ~~the Oklahoma Statutes~~ this title shall also apply to a merger under
23 this section; if the surviving constituent party is the entity, the
24 word "corporation" where applicable, as used in subsection D of

1 Section 1082 of ~~Title 18 of the Oklahoma Statutes~~ this title, shall
2 be deemed to include an entity as defined herein; and the terms and
3 conditions of the merger shall obligate the surviving constituent
4 party to provide the agreement, and take the actions required by
5 subsection D of Section 1082 of ~~Title 18 of the Oklahoma Statutes~~
6 this title.

7 B. Sections 1088, 1090 and 1127 of ~~Title 18 of the Oklahoma~~
8 ~~Statutes~~ this title shall, insofar as they are applicable, apply to
9 a merger under this section, and Section 1089 and subsection E of
10 Section 1081 of ~~Title 18 of the Oklahoma Statutes~~ this title shall
11 apply to a merger under this section in which the surviving
12 constituent party is a corporation of this state. For purposes of
13 this subsection, references to "agreement of merger" in subsection F
14 of Section 1081 of ~~Title 18 of the Oklahoma Statutes~~ this title
15 shall mean the terms and condition of the merger set forth in the
16 certificate of ownership and merger, and references to "corporation"
17 in Sections 1088, 1089, and 1090 of ~~Title 18 of the Oklahoma~~
18 ~~Statutes~~ this title and Section 1127 of ~~Title 18 of the Oklahoma~~
19 ~~Statutes~~ this title shall be deemed to include the entity, as
20 applicable. Section 1091 of ~~Title 18 of the Oklahoma Statutes~~ this
21 title shall not apply to any merger effected under this section,
22 except as provided in subsection C of this section.

23 C. In the event all of the stock of ~~an Oklahoma~~ a domestic
24 corporation party to a merger effected under this section is not

1 owned by the entity immediately prior to the merger, the
2 shareholders of such ~~Oklahoma~~ domestic corporation party to the
3 merger shall have appraisal rights as set forth in Section 1091 of
4 ~~Title 18 of the Oklahoma Statutes~~ this title.

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

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

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

13 2. "Entity" means a partnership, whether general or limited,
14 and including a limited liability partnership and a limited
15 liability limited partnership, a limited liability company, and
16 any unincorporated nonprofit or for-profit association, trust or
17 enterprise having members or having outstanding shares of stock
18 or other evidences of financial, beneficial or membership
19 interest therein, whether formed by agreement or under statutory
20 authority or otherwise and whether formed or organized under the
21 laws of this state or the laws of any other jurisdiction; and

22 3. "Governing documents" means a partnership agreement,
23 operating agreement, articles of association or any other
24

1 instrument containing the provisions by which an entity is
2 formed or organized.

3 SECTION 14. AMENDATORY 18 O.S. 2011, Section 1090.3, as
4 amended by Section 25, Chapter 323, O.S.L. 2017 (18 O.S. Supp. 2019,
5 Section 1090.3), is amended to read as follows:

6 Section 1090.3.

7 BUSINESS COMBINATIONS WITH INTERESTED SHAREHOLDERS

8 A. Notwithstanding any other provisions of this title, a
9 corporation shall not engage in any business combination with any
10 interested shareholder for a period of three (3) years following the
11 time that the person became an interested shareholder, unless:

12 1. Prior to that time, the board of directors of the
13 corporation approved either the business combination or the
14 transaction which resulted in the person becoming an interested
15 shareholder;

16 2. Upon consummation of the transaction which resulted in the
17 person becoming an interested shareholder, the interested
18 shareholder owned at least eighty-five percent (85%) of the
19 outstanding voting stock of the corporation at the time the
20 transaction commenced, excluding for purposes of determining the
21 outstanding voting stock, but not the outstanding voting stock owned
22 by the interested shareholder, those shares owned by:

23 a. persons who are directors and also officers, and
24

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~~ adopted by the

1 affirmative vote of a majority of the outstanding
2 voting stock of the corporation.

3 b. ~~An amendment adopted pursuant to this paragraph shall~~
4 ~~be effective immediately in~~ In the case of a
5 corporation that both:

6 (1) has never had a class of voting stock that falls
7 within any of the ~~three~~ two categories set out in
8 paragraph 4 of this subsection, and

9 (2) has not elected by a provision in its original
10 certificate of incorporation or any amendment
11 thereto to be governed by this section, such
12 amendment shall become effective upon (i) in the
13 case of an amendment to the certificate of
14 incorporation, the date and time at which the
15 certificate filed in accordance with Section 1007
16 of this title becomes effective, or (ii) in the
17 case of an amendment to the bylaws, the date of
18 the adoption of such amendment.

19 c. In all other cases, an amendment adopted pursuant to
20 this paragraph shall ~~not be~~ become effective ~~until~~ (i)
21 in the case of an amendment to the certificate of
22 incorporation, twelve (12) months after the adoption
23 of the amendment and date and time at which the
24 certificate filed in accordance with Section 1007 of

1 this title becomes effective, or (ii) in the case of
2 an amendment to the bylaws, twelve (12) months after
3 the date of the adoption of such amendment, and in
4 either case, the election not to be governed by this
5 section shall not apply to any business combination
6 between a corporation and any person who became an
7 interested shareholder of the corporation on or ~~prior~~
8 ~~to the adoption~~ before (i) in the case of an amendment
9 to the certificate of incorporation, the date and time
10 at which the certificate filed in accordance with
11 Section 1007 of this title becomes effective, or (ii)
12 in the case of an amendment to the bylaws, the date of
13 the adoption of such amendment. A bylaw amendment
14 adopted pursuant to this paragraph shall not be
15 further amended by the board of directors;

16 4. The corporation does not have a class of voting stock that
17 is:

- 18 a. listed on a national securities exchange, or
- 19 b. held of record by one thousand or more shareholders,
20 unless any of the foregoing results from action taken,
21 directly or indirectly, by an interested shareholder
22 or from a transaction in which a person becomes an
23 interested shareholder;

1 5. A person becomes an interested shareholder inadvertently

2 and:

3 a. as soon as practicable divests itself of ownership of
4 sufficient shares so that the person ceases to be an
5 interested shareholder, and

6 b. would not, at any time within the three-year period
7 immediately prior to a business combination between
8 the corporation and the person, have been an
9 interested shareholder but for the inadvertent
10 acquisition;

11 6. a. The business combination is proposed prior to the
12 consummation or abandonment of, and subsequent to the
13 earlier of the public announcement or the notice
14 required hereunder of, a proposed transaction which:

15 (1) constitutes one of the transactions described in
16 subparagraph b of this paragraph,

17 (2) is with or by a person who:

18 (a) was not an interested shareholder during the
19 previous three (3) years, or

20 (b) became an interested shareholder with the
21 approval of the corporation's board of
22 directors or during the period described in
23 paragraph 7 of this subsection, and
24

1 (3) is approved or not opposed by a majority of the
2 members of the board of directors then in office,
3 but not less than one, who were directors prior
4 to any person becoming an interested shareholder
5 during the previous three (3) years or were
6 recommended for election or elected to succeed
7 the directors by a majority of the directors.

8 b. The proposed transactions referred to in subparagraph
9 a of this paragraph are limited to:

10 (1) a share acquisition pursuant to Section 1090.1 of
11 this title, or a merger or consolidation of the
12 corporation, except for a merger in respect of
13 which, pursuant to subsection F or G of Section
14 1081 of this title, no vote of the shareholders
15 of the corporation is required,

16 (2) a sale, lease, exchange, mortgage, pledge,
17 transfer, or other disposition, in one
18 transaction or a series of transactions, whether
19 as part of a dissolution or otherwise, of assets
20 of the corporation or of any direct or indirect
21 majority-owned subsidiary of the corporation,
22 other than to any direct or indirect wholly owned
23 subsidiary or to the corporation, having an
24 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

1 certificate of incorporation or any amendment thereto to be governed
2 by this section; provided, that any amendment to the certificate of
3 incorporation shall not apply to restrict a business combination
4 between the corporation and an interested shareholder of the
5 corporation if the interested shareholder became an interested
6 shareholder ~~prior to the effective date of the amendment~~ before the
7 date and time at which the certificate filed in accordance with
8 Section 1007 of this title becomes effective.

9 D. As used in this section:

10 1. "Affiliate" means a person that directly, or indirectly
11 through one or more intermediaries, controls, or is controlled by,
12 or is under common control with, another person;

13 2. "Associate", when used to indicate a relationship with any
14 person, means:

- 15 a. any corporation, partnership, unincorporated
16 association, or other entity of which the person is a
17 director, officer, or partner or is the owner of
18 twenty percent (20%) or more of any class of voting
19 stock,
- 20 b. any trust or other estate in which the person has at
21 least a twenty-percent beneficial interest or as to
22 which such person serves as trustee or in a similar
23 fiduciary capacity, and
24

1 c. any relative or spouse of the person, or any relative
2 of the spouse, who has the same residence as the
3 person;

4 3. "Business combination", when used in reference to any
5 corporation and any interested shareholder of the corporation,
6 means:

7 a. any merger or consolidation of the corporation or any
8 direct or indirect majority-owned subsidiary of the
9 corporation with:

10 (1) the interested shareholder, or

11 (2) any other corporation, partnership,

12 unincorporated association, or other entity if

13 the merger or consolidation is caused by the

14 interested shareholder and, as a result of the

15 merger or consolidation subsection A of this

16 section is not applicable to the surviving

17 entity,

18 b. any sale, lease, exchange, mortgage, pledge, transfer,
19 or other disposition, in one transaction or a series
20 of transactions, except proportionately as a
21 shareholder of the corporation, to or with the
22 interested shareholder, whether as part of a
23 dissolution or otherwise, of assets of the corporation
24 or of any direct or indirect majority-owned subsidiary

1 of the corporation which assets have an aggregate
2 market value equal to ten percent (10%) or more of
3 either the aggregate market value of all the assets of
4 the corporation determined on a consolidated basis or
5 the aggregate market value of all the outstanding
6 stock of the corporation,

7 c. any transaction which results in the issuance or
8 transfer by the corporation or by any direct or
9 indirect majority-owned subsidiary of the corporation
10 of any stock of the corporation or of the subsidiary
11 to the interested shareholder, except:

12 (1) pursuant to the exercise, exchange, or conversion
13 of securities exercisable for, exchangeable for,
14 or convertible into stock of the corporation or
15 any subsidiary which securities were outstanding
16 prior to the time that the interested shareholder
17 became an interested shareholder,

18 (2) pursuant to a merger under subsection G of
19 Section 1081 of this title,

20 (3) pursuant to a dividend or distribution paid or
21 made, or the exercise, exchange, or conversion of
22 securities exercisable for, exchangeable for, or
23 convertible into stock of the corporation or any
24 subsidiary which security is distributed, pro

1 rata, to all holders of a class or series of
2 stock of the corporation subsequent to the time
3 the interested shareholder became an interested
4 shareholder,

5 (4) pursuant to an exchange offer by the corporation
6 to purchase stock made on the same terms to all
7 holders of the stock, or

8 (5) any issuance or transfer of stock by the
9 corporation; provided, however, that in no case
10 under divisions (3) through (5) of this
11 subparagraph shall there be an increase in the
12 interested shareholder's proportionate share of
13 the stock of any class or series of the
14 corporation or of the voting stock of the
15 corporation,

16 d. any transaction involving the corporation or any
17 direct or indirect majority-owned subsidiary of the
18 corporation which has the effect, directly or
19 indirectly, of increasing the proportionate share of
20 the stock of any class or series, or securities
21 convertible into the stock of any class or series, or
22 the outstanding voting stock, of the corporation or of
23 any subsidiary which is owned by the interested
24 shareholder, except as a result of immaterial changes

1 due to fractional share adjustments or as a result of
2 any purchase or redemption of any shares of stock not
3 caused, directly or indirectly, by the interested
4 shareholder,

- 5 e. any receipt by the interested shareholder of the
6 benefit, directly or indirectly, except
7 proportionately as a shareholder of the corporation,
8 of any loans, advances, guarantees, pledges, or other
9 financial benefits, other than those expressly
10 permitted in subparagraphs a through d of this
11 paragraph, provided by or through the corporation or
12 any direct or indirect majority-owned subsidiary, or
13 f. any share acquisition by the interested shareholder
14 from the corporation or any direct or indirect
15 majority-owned subsidiary of the corporation pursuant
16 to Section 1090.1 of this title;

17 4. "Control", including the terms "controlling", "controlled
18 by" and "under common control with", means the possession, directly
19 or indirectly, of the power to direct or cause the direction of the
20 management and policies of a person, whether through the ownership
21 of voting stock, by contract, or otherwise. A person who is the
22 owner of twenty percent (20%) or more of the outstanding voting
23 stock of any corporation, partnership, unincorporated association or
24 other entity shall be presumed to have control of the entity, in the

1 absence of proof by a preponderance of the evidence to the contrary.
2 Notwithstanding the foregoing, a presumption of control shall not
3 apply where the person holds stock, in good faith and not for the
4 purpose of circumventing this section, as an agent, bank, broker,
5 nominee, custodian, or trustee for one or more owners who do not
6 individually or as a group have control of the entity;

7 5. a. "Interested shareholder" means:

8 (1) any person, other than the corporation and any
9 direct or indirect majority-owned subsidiary of
10 the corporation, that:

11 (a) is the owner of fifteen percent (15%) or
12 more of the outstanding voting stock of the
13 corporation, or

14 (b) is an affiliate or associate of the
15 corporation and was the owner of fifteen
16 percent (15%) or more of the outstanding
17 voting stock of the corporation at any time
18 within the three-year period immediately
19 prior to the date on which it is sought to
20 be determined whether the person is an
21 interested shareholder, and

22 (2) the affiliates and associates of the person.

23 b. "Interested shareholder" shall not mean:

24 (1) any person who:

1 (a) owned shares in excess of the fifteen
2 percent (15%) limitation set forth herein as
3 of, or acquired such shares pursuant to a
4 tender offer commenced prior to, September
5 1, 1991, or pursuant to an exchange offer
6 announced prior to September 1, 1991, and
7 commenced within ninety (90) days thereafter
8 and either:

9 i. continued to own shares in excess of
10 the fifteen percent (15%) limitation or
11 would have but for action by the
12 corporation, or

13 ii. is an affiliate or associate of the
14 corporation and so continued, or so
15 would have continued but for action by
16 the corporation, to be the owner of
17 fifteen percent (15%) or more of the
18 outstanding voting stock of the
19 corporation at any time within the
20 three-year period immediately prior to
21 the date on which it is sought to be
22 determined whether the person is an
23 interested shareholder, or
24

1 (b) acquired the shares from a person described
2 in subdivision (a) of this division by gift,
3 inheritance, or in a transaction in which no
4 consideration was exchanged, or

5 (2) any person whose ownership of shares in excess of
6 the fifteen percent (15%) limitation set forth
7 herein is the result of action taken solely by
8 the corporation; provided, that the person shall
9 be an interested shareholder if thereafter the
10 person acquires additional shares of voting stock
11 of the corporation, except as a result of further
12 corporate action not caused, directly or
13 indirectly, by the person.

14 c. For the purpose of determining whether a person is an
15 interested shareholder, the stock of the corporation
16 deemed to be outstanding shall include stock deemed to
17 be owned by the person through application of
18 paragraph 9 of this subsection, but shall not include
19 any other unissued stock of the corporation which may
20 be issuable pursuant to any agreement, arrangement, or
21 understanding, or upon exercise of conversion rights,
22 warrants, or options, or otherwise;
23
24

1 6. "Person" means any individual, corporation, partnership,
2 unincorporated association, any other entity, any group and any
3 member of a group;

4 7. "Stock" means, with respect to any corporation, capital
5 stock and, with respect to any other entity, any equity interest;

6 8. "Voting stock" means, with respect to any corporation, stock
7 of any class or series entitled to vote generally in the election of
8 directors and, with respect to any entity that is not a corporation,
9 any equity interest entitled to vote generally in the election of
10 the governing body of the entity. Every reference to a percentage
11 of voting stock refers to the percentage of the votes of the voting
12 stock; and

13 9. "Owner", including the terms "own" and "owned", when used
14 with respect to any stock, means a person who individually or with
15 or through any of its affiliates or associates:

16 a. beneficially owns the stock, directly or indirectly,
17 or

18 b. has:

19 (1) the right to acquire the stock, whether the right
20 is exercisable immediately or only after the
21 passage of time, pursuant to any agreement,
22 arrangement, or understanding, or upon the
23 exercise of conversion rights, exchange rights,
24 warrants, or options, or otherwise; provided,

1 however, that a person shall not be deemed the
2 owner of stock tendered pursuant to a tender or
3 exchange offer made by the person or any of the
4 person's affiliates or associates until the
5 tendered stock is accepted for purchase or
6 exchange, or

7 (2) the right to vote the stock pursuant to any
8 agreement, arrangement, or understanding;
9 provided, however, that a person shall not be
10 deemed the owner of any stock because of the
11 person's right to vote the stock if the
12 agreement, arrangement, or understanding to vote
13 the stock arises solely from a revocable proxy or
14 consent given in response to a proxy or consent
15 solicitation made to ten or more persons, or

16 c. has any agreement, arrangement, or understanding for
17 the purpose of acquiring, holding, or voting, except
18 voting pursuant to a revocable proxy or consent as
19 described in division (2) of subparagraph b of this
20 paragraph, or disposing of the stock with any other
21 person that beneficially owns, or whose affiliates or
22 associates beneficially own, directly or indirectly,
23 the stock.

1 E. No provisions of a certificate of incorporation or bylaw
2 shall require, for any vote of shareholders required by this
3 section, a greater vote of shareholders than that specified in this
4 section.

5 SECTION 15. AMENDATORY 18 O.S. 2011, Section 1091, as
6 amended by Section 26, Chapter 323, O.S.L. 2017 (18 O.S. Supp. 2019,
7 Section 1091), is amended to read as follows:

8 Section 1091.

9 APPRAISAL RIGHTS

10 A. Any shareholder of a corporation of this state who holds
11 shares of stock on the date of the making of a demand pursuant to
12 the provisions of subsection D of this section with respect to the
13 shares, who continuously holds the shares through the effective date
14 of the merger or consolidation, who has otherwise complied with the
15 provisions of subsection D of this section and who has neither voted
16 in favor of the merger or consolidation nor consented thereto in
17 writing pursuant to the provisions of Section 1073 of this title
18 shall be entitled to an appraisal by the district court of the fair
19 value of the shares of stock under the circumstances described in
20 subsections B and C of this section. As used in this section, the
21 word "shareholder" means a holder of record of stock in a stock
22 corporation; the words "stock" and "share" mean and include what is
23 ordinarily meant by those words; and "depository receipt" means an
24 instrument issued by a depository representing an interest in one or

1 more shares, or fractions thereof, solely of stock of a corporation,
2 which stock is deposited with the depository.

3 B. 1. Except as otherwise provided for in this subsection,
4 appraisal rights shall be available for the shares of any class or
5 series of stock of a constituent corporation in a merger or
6 consolidation, or of the acquired corporation in a share
7 acquisition, to be effected pursuant to the provisions of Section
8 1081 of this title, other than a merger effected pursuant to
9 subsection G of Section 1081 of this title, or, ~~subject to paragraph~~
10 ~~3 of this subsection, subsection H of Section 1081, and the~~
11 provisions of Section 1082, 1084, 1085, 1086, 1087, 1090.1 or 1090.2
12 of this title.

13 2. a. No appraisal rights under this section shall be
14 available for the shares of any class or series of
15 stock which stock, or depository receipts in respect
16 thereof, at the record date fixed to determine the
17 shareholders entitled to receive notice of the
18 meeting of shareholders to act upon the agreement of
19 merger or consolidation, or, the case of a merger
20 pursuant to subsection H of Section 1081 of this
21 title, as of immediately before the execution of the
22 agreement of merger, were either:

- 23 (1) listed on a national securities exchange; or
24 (2) held of record by more than two thousand holders.

1 ~~No appraisal rights shall be available for any shares of stock~~
2 ~~of the constituent corporation surviving a merger if the merger did~~
3 ~~not require for its approval the vote of the shareholders of the~~
4 ~~surviving corporation as provided in subsection C of Section 1081 of~~
5 ~~this title.~~

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

13 3. Notwithstanding the provisions of paragraph 2 of this
14 subsection, appraisal rights provided for in this section shall be
15 available for the shares of any class or series of stock of a
16 constituent corporation if the holders thereof are required by the
17 terms of an agreement of merger or consolidation pursuant to the
18 provisions of Section 1081, 1082, 1084, 1085, 1086, 1087, 1090.1 or
19 1090.2 of this title to accept for the stock anything except:

20 a. shares of stock of the corporation surviving or
21 resulting from the merger or consolidation or
22 depository receipts thereof, or

23 b. shares of stock of any other corporation, or
24 depository receipts in respect thereof, which shares

1 of stock or depository receipts at the effective date
2 of the merger or consolidation will be either listed
3 on a national securities exchange or held of record by
4 more than two thousand holders, or

5 c. cash in lieu of fractional shares or fractional
6 depository receipts described in subparagraphs a and b
7 of this paragraph, or

8 d. any combination of the shares of stock, depository
9 receipts, and cash in lieu of the fractional shares or
10 depository receipts described in subparagraphs a, b,
11 and c of this paragraph.

12 4. In the event all of the stock of a subsidiary Oklahoma
13 corporation party to a merger effected pursuant to the provisions of
14 ~~subsection H of Section 1081 or~~ Section 1083 or 1083.1 of this title
15 is not owned by the parent corporation immediately prior to the
16 merger, appraisal rights shall be available for the shares of the
17 subsidiary Oklahoma corporation.

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

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

4 D. Appraisal rights shall be perfected as follows:

5 1. If a proposed merger or consolidation for which appraisal
6 rights are provided under this section is to be submitted for
7 approval at a meeting of shareholders, the corporation, not less
8 than twenty (20) days prior to the meeting, shall notify each of its
9 shareholders who was such on the record date for notice of such
10 meeting, or such members who received notice in accordance with
11 subsection C of Section 1081 of this title, with respect to shares
12 for which appraisal rights are available pursuant to subsection B or
13 C of this section that appraisal rights are available for any or all
14 of the shares of the constituent corporations, and shall include in
15 the notice a copy of this section and, if one of the constituent
16 corporations is a nonstock corporation, a copy of Section 1004.1 of
17 this title. Each shareholder electing to demand the appraisal of
18 the shares of the shareholder shall deliver to the corporation,
19 before the taking of the vote on the merger or consolidation, a
20 written demand for appraisal of the shares of the shareholder. The
21 demand will be sufficient if it reasonably informs the corporation
22 of the identity of the shareholder and that the shareholder intends
23 thereby to demand the appraisal of the shares of the shareholder. A
24 proxy or vote against the merger or consolidation shall not

1 constitute such a demand. A shareholder electing to take such
2 action must do so by a separate written demand as herein provided.
3 Within ten (10) days after the effective date of the merger or
4 consolidation, the surviving or resulting corporation shall notify
5 each shareholder of each constituent corporation who has complied
6 with the provisions of this subsection and has not voted in favor of
7 or consented to the merger or consolidation as of the date that the
8 merger or consolidation has become effective; or

9 2. If the merger or consolidation is approved pursuant to the
10 provisions of Section 1073, subsection H of Section 1081, Section
11 1083 or Section 1083.1 of this title, either a constituent
12 corporation before the effective date of the merger or consolidation
13 or the surviving or resulting corporation within ten (10) days
14 thereafter shall notify each of the holders of any class or series
15 of stock of the constituent corporation who are entitled to
16 appraisal rights of the approval of the merger or consolidation and
17 that appraisal rights are available for any or all shares of such
18 class or series of stock of the constituent corporation, and shall
19 include in the notice a copy of this section and, if one of the
20 constituent corporations is a nonstock corporation, a copy of
21 Section 1004.1 of this title. The notice may, and, if given on or
22 after the effective date of the merger or consolidation, shall, also
23 notify the shareholders of the effective date of the merger or
24 consolidation. Any shareholder entitled to appraisal rights may,

1 within twenty (20) days after the date of mailing of the notice or,
2 in the case of a merger approved pursuant to subsection H of Section
3 1081 of this title, within the later of the consummation of an offer
4 contemplated by subsection H of Section 1081 of this title and
5 twenty (20) days after the date of mailing of such notice, demand in
6 writing from the surviving or resulting corporation the appraisal of
7 the holder's shares. The demand will be sufficient if it reasonably
8 informs the corporation of the identity of the shareholder and that
9 the shareholder intends to demand the appraisal of the holder's
10 shares. If the notice does not notify shareholders of the effective
11 date of the merger or consolidation either:

- 12 a. each constituent corporation shall send a second
13 notice before the effective date of the merger or
14 consolidation notifying each of the holders of any
15 class or series of stock of the constituent
16 corporation that are entitled to appraisal rights of
17 the effective date of the merger or consolidation, or
- 18 b. the surviving or resulting corporation shall send a
19 second notice to all holders on or within ten (10)
20 days after the effective date of the merger or
21 consolidation; provided, however, that if the second
22 notice is sent more than twenty (20) days following
23 the mailing of the first notice or, in the case of a
24 merger approved pursuant to subsection H of Section

1 1081 of this title, later than the later of the
2 consummation of the offer contemplated by subsection H
3 of Section 1081 of this title and twenty (20) days
4 following the sending of the first notice, the second
5 notice need only be sent to each shareholder who is
6 entitled to appraisal rights and who has demanded
7 appraisal of the holder's shares in accordance with
8 this subsection. An affidavit of the secretary or
9 assistant secretary or of the transfer agent of the
10 corporation that is required to give either notice
11 that the notice has been given shall, in the absence
12 of fraud, be prima facie evidence of the facts stated
13 therein. For purposes of determining the shareholders
14 entitled to receive either notice, each constituent
15 corporation may fix, in advance, a record date that
16 shall be not more than ten (10) days prior to the date
17 the notice is given; provided, if the notice is given
18 on or after the effective date of the merger or
19 consolidation, the record date shall be the effective
20 date. If no record date is fixed and the notice is
21 given prior to the effective date, the record date
22 shall be the close of business on the day next
23 preceding the day on which the notice is given.
24

1 E. Within one hundred twenty (120) days after the effective
2 date of the merger or consolidation, the surviving or resulting
3 corporation or any shareholder who has complied with the provisions
4 of subsections A and D of this section and who is otherwise entitled
5 to appraisal rights, may file a petition in district court demanding
6 a determination of the value of the stock of all such shareholders.
7 Notwithstanding the foregoing, at any time within sixty (60) days
8 after the effective date of the merger or consolidation, any
9 shareholder who has not commenced an appraisal proceeding or joined
10 that proceeding as a named party shall have the right to withdraw
11 the demand of the shareholder for appraisal and to accept the terms
12 offered upon the merger or consolidation. Within one hundred twenty
13 (120) days after the effective date of the merger or consolidation,
14 any shareholder who has complied with the requirements of
15 subsections A and D of this section, upon written request, shall be
16 entitled to receive from the corporation surviving the merger or
17 resulting from the consolidation a statement setting forth the
18 aggregate number of shares not voted in favor of the merger or
19 consolidation ~~and~~ or, in the case of a merger approved pursuant to
20 subsection H of Section 1081 of this title, the aggregate number of
21 shares, other than any excluded stock as defined in subparagraph d
22 of paragraph 6 of subsection H of Section 1081 of this title, that
23 were the subject of, and were not tendered into, and accepted for
24 purchase or exchange in, the offer referred to in paragraph 2 of

1 subsection H of Section 1081 of this title and, in either case, with
2 respect to which demands for appraisal have been received and the
3 aggregate number of holders of the shares. The written statement
4 shall be mailed to the shareholder within ten (10) days after the
5 shareholder's written request for a statement is received by the
6 surviving or resulting corporation or within ten (10) days after
7 expiration of the period for delivery of demands for appraisal
8 pursuant to the provisions of subsection D of this section,
9 whichever is later. Notwithstanding subsection A of this section, a
10 person who is the beneficial owner of shares of such stock held
11 either in a voting trust or by a nominee on behalf of such person
12 may, in such person's own name, file a petition or request from the
13 corporation the statement described in this section.

14 F. Upon the filing of any such petition by a shareholder,
15 service of a copy thereof shall be made upon the surviving or
16 resulting corporation, which, within twenty (20) days after service,
17 shall file, in the office of the court clerk of the district court
18 in which the petition was filed, a duly verified list containing the
19 names and addresses of all shareholders who have demanded payment
20 for their shares and with whom agreements regarding the value of
21 their shares have not been reached by the surviving or resulting
22 corporation. If the petition shall be filed by the surviving or
23 resulting corporation, the petition shall be accompanied by such
24 duly verified list. The court clerk, if so ordered by the court,

1 shall give notice of the time and place fixed for the hearing on the
2 petition by registered or certified mail to the surviving or
3 resulting corporation and to the shareholders shown on the list at
4 the addresses therein stated. Notice shall also be given by one or
5 more publications at least one (1) week before the day of the
6 hearing, in a newspaper of general circulation published in the City
7 of Oklahoma City, Oklahoma, or other publication as the court deems
8 advisable. The forms of the notices by mail and by publication
9 shall be approved by the court, and the costs thereof shall be borne
10 by the surviving or resulting corporation.

11 G. At the hearing on the petition, the court shall determine
12 the shareholders who have complied with the provisions of this
13 section and who have become entitled to appraisal rights. The court
14 may require the shareholders who have demanded an appraisal of their
15 shares and who hold stock represented by certificates to submit
16 their certificates of stock to the court clerk for notation thereon
17 of the pendency of the appraisal proceedings; and if any shareholder
18 fails to comply with this direction, the court may dismiss the
19 proceedings as to that shareholder. If immediately before the
20 merger or consolidation the shares of the class or series of stock
21 of the constituent corporation as to which appraisal rights are
22 available were listed on a national securities exchange, the court
23 shall dismiss the proceedings as to all holders of such shares who
24 are otherwise entitled to appraisal rights unless (1) the total

1 number of shares entitled to appraisal exceeds one percent (1%) of
2 the outstanding shares of the class or series eligible for
3 appraisal, (2) the value of the consideration provided in the merger
4 or consolidation for such total number of shares exceeds One Million
5 Dollars (\$1,000,000.00), or (3) the merger was approved pursuant to
6 Section 1083 or Section 1083.1 of this title.

7 H. After determining the shareholders entitled to an appraisal,
8 the court shall appraise the shares, determining their fair value
9 exclusive of any element of value arising from the accomplishment or
10 expectation of the merger or consolidation, together with interest,
11 if any, to be paid upon the amount determined to be the fair value.
12 In determining the fair value, the court shall take into account all
13 relevant factors. In determining the fair rate of interest, the
14 court may consider all relevant factors. Unless the court in its
15 discretion determines otherwise for good cause shown, and except as
16 provided in this subsection, interest from the effective date of the
17 merger through the date of payment of the judgment shall be
18 compounded quarterly and shall accrue at five percent (5%) over the
19 Federal Reserve discount rate, including any surcharge, as
20 established from time to time during the period between the
21 effective date of the merger and the date of payment of judgment.
22 At any time before the entry of judgment in the proceedings, the
23 surviving corporation may pay to each shareholder entitled to
24 appraisal an amount in cash, in which case interest shall accrue

1 thereafter as provided herein only upon the sum of (1) the
2 difference, if any, between the amount so paid and the fair value of
3 the shares as determined by the court, and (2) interest theretofore
4 accrued, unless paid at that time. Upon application by the
5 surviving or resulting corporation or by any shareholder entitled to
6 participate in the appraisal proceeding, the court may, in its
7 discretion, proceed to trial upon the appraisal prior to the final
8 determination of the shareholder entitled to an appraisal. Any
9 shareholder whose name appears on the list filed by the surviving or
10 resulting corporation pursuant to the provisions of subsection F of
11 this section and who has submitted the certificates of stock of the
12 shareholder to the court clerk, if required, may participate fully
13 in all proceedings until it is finally determined that the
14 shareholder is not entitled to appraisal rights pursuant to the
15 provisions of this section.

16 I. The court shall direct the payment of the fair value of the
17 shares, together with interest, if any, by the surviving or
18 resulting corporation to the shareholders entitled thereto. Payment
19 shall be made to each shareholder, in the case of holders of
20 uncertificated stock immediately, and in the case of holders of
21 shares represented by certificates upon the surrender to the
22 corporation of the certificates representing the stock. The court's
23 decree may be enforced as other decrees in the district court may be
24

1 enforced, whether the surviving or resulting corporation be a
2 corporation of this state or of any other state.

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

11 K. From and after the effective date of the merger or
12 consolidation, no shareholder who has demanded appraisal rights as
13 provided for in subsection D of this section shall be entitled to
14 vote the stock for any purpose or to receive payment of dividends or
15 other distributions on the stock, except dividends or other
16 distributions payable to shareholders of record at a date which is
17 prior to the effective date of the merger or consolidation;
18 provided, however, that if no petition for an appraisal shall be
19 filed within the time provided for in subsection E of this section,
20 or if the shareholder shall deliver to the surviving or resulting
21 corporation a written withdrawal of the shareholder's demand for an
22 appraisal and an acceptance of the merger or consolidation, either
23 within sixty (60) days after the effective date of the merger or
24 consolidation as provided for in subsection E of this section or

1 thereafter with the written approval of the corporation, then the
2 right of the shareholder to an appraisal shall cease; provided
3 further, no appraisal proceeding in the district court shall be
4 dismissed as to any shareholder without the approval of the court,
5 and approval may be conditioned upon terms as the court deems just;
6 provided, however, that this provision shall not affect the right of
7 any shareholder who has not commenced an appraisal proceeding or
8 joined that proceeding as a named party to withdraw such
9 shareholder's demand for appraisal and to accept the terms offered
10 upon the merger or consolidation within sixty (60) days after the
11 effective date of the merger or consolidation, as set forth in
12 subsection E of this section.

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

18 SECTION 16. AMENDATORY 18 O.S. 2011, Section 2001, as
19 amended by Section 37, Chapter 323, O.S.L. 2017 (18 O.S. Supp. 2019,
20 Section 2001), is amended to read as follows:

21 Section 2001.

22 DEFINITIONS

23 As used in the Oklahoma Limited Liability Company Act, unless
24 the context otherwise requires:

1 1. "Articles of organization" means documents filed for the
2 purpose of forming a limited liability company, and the articles as
3 amended;

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

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

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

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

20 6. "Corporation" means a corporation ~~formed~~ organized under the
21 laws of this state or ~~a foreign corporation as defined in this~~
22 ~~section~~ the laws of any jurisdiction other than this state;

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

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

4 9. "Foreign limited liability company" means:

5 a. an unincorporated association,

6 b. ~~organized~~ formed under the laws of ~~a state~~ any
7 jurisdiction other than ~~the laws of~~ this state ~~or~~
8 ~~organized under the laws of any foreign country,~~ and

9 c. ~~organized~~ formed under a statute pursuant to which an
10 association may be formed that affords to each of its
11 members limited liability with respect to the
12 liabilities of the entity, ~~and a limited liability~~
13 ~~company formed under the laws of any state other than~~
14 ~~this state, or under the laws of the District of~~
15 ~~Columbia or any foreign country;~~

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

20 11. "Jurisdiction", when used to refer to a political entity,
21 means the United States, a state, a tribal government, a foreign
22 country or a political subdivision of a foreign country;
23
24

1 12. "Limited liability company" or "domestic limited liability
2 company" means an entity formed under the Oklahoma Limited Liability
3 Company Act and existing under the laws of this state;

4 ~~12.~~ 13. "Limited partnership" means a limited partnership
5 formed under the laws of this state or a foreign limited partnership
6 as defined in this section;

7 ~~13.~~ 14. "Manager" or "managers" means a person or persons
8 designated by the members of a limited liability company to manage
9 the limited liability company as provided in the articles of
10 organization or an operating agreement;

11 ~~14.~~ 15. "Member" means a person with an ownership interest in a
12 limited liability company, with the rights and obligations specified
13 under ~~this act~~ the Oklahoma Limited Liability Company Act;

14 ~~15.~~ 16. "Membership interest" or "interest" means a member's
15 rights in the limited liability company, collectively, including the
16 member's share of the profits and losses of the limited liability
17 company, the right to receive distributions of the limited liability
18 company's assets and capital interest, any right to vote or
19 participate in management, and such other rights accorded to members
20 under the articles of organization, operating agreement, or the
21 Oklahoma Limited Liability Company Act;

22 ~~16.~~ 17. "Operating agreement", regardless of whether referred
23 to as an operating agreement and whether oral, in a record, implied,
24 or in any combination thereof, means any agreement of the members,

1 including a sole member, as to the affairs of a limited liability
2 company and the conduct of its business, including the agreement as
3 amended or restated;

4 ~~17.~~ 18. "Person" means an individual, a general partnership, a
5 limited partnership, a limited liability company, a trust, an
6 estate, an association, a corporation or any other legal or
7 commercial entity;

8 ~~18.~~ 19. "State" means a state, territory or possession of the
9 United States, the District of Columbia, or the Commonwealth of
10 Puerto Rico; and

11 ~~19.~~ 20. "Charitable entity" means any nonprofit limited
12 liability company or other entity that is exempt from taxation under
13 Section 501(c)(3) of the United States Internal Revenue Code (26
14 U.S.C., Section 501(c)(3)), or any successor provisions.

15 SECTION 17. AMENDATORY 18 O.S. 2011, Section 2010, is
16 amended to read as follows:

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

19 1. A registered office which may be, but need not be, the same
20 as its principal place of business; and

21 2. A registered agent for service of process on the limited
22 liability company that may be the domestic limited liability company
23 itself, an individual resident of this state, or a domestic or
24 qualified foreign corporation, limited liability company, or general

1 or limited partnership, including a limited liability partnership or
2 a limited liability limited partnership. Each registered agent
3 shall maintain a business office identical with the registered
4 office which is open during regular business hours to accept service
5 of process and otherwise perform the functions of a registered
6 agent.

7 B. 1. A limited liability company may designate or change its
8 registered agent, registered office, or principal office by filing
9 with the Office of the Secretary of State a statement authorizing
10 the designation or change and signed by any manager.

11 2. A limited liability company may change the street address of
12 its registered office by filing with the Office of the Secretary of
13 State a statement of the change signed by any manager.

14 3. A designation or change of a principal office or registered
15 agent or street address of the registered office for a limited
16 liability company under this subsection is effective when the Office
17 of the Secretary of State files the statement, unless a later
18 effective date or time, which shall be a specified date or time not
19 later than a time on the ninetieth day after the filing, is provided
20 in the statement.

21 C. 1. A registered agent who changes his or her street address
22 in the state may notify the Office of the Secretary of State of the
23 change by filing with the Office of the Secretary of State a
24

1 statement of the change signed by the agent or on the agent's
2 behalf.

3 2. The statement shall include:

- 4 a. the name of the limited liability company for which
- 5 the change is effective,
- 6 b. the new street address of the registered agent, and
- 7 c. the date on which the change is effective, if to be
- 8 effective after the filing date.

9 3. If the new address of the registered agent is the same as
10 the new address of the principal office of the limited liability
11 company, the statement may include a change of address of the
12 principal office if:

- 13 a. the registered agent notifies the limited liability
- 14 company of the change in writing, and
- 15 b. the statement recites that the registered agent has
- 16 done so.

17 4. The change of address of the registered agent or principal
18 office is effective when the Office of the Secretary of State files
19 the statement, unless a later effective date or time, which shall be
20 a specified date or time not later than a time on the ninetieth day
21 after the filing, is provided in the statement.

22 D. 1. A registered agent may resign by filing with the Office
23 of the Secretary of State a copy of the resignation, signed and
24 acknowledged by the registered agent, which contains a statement

1 that notice of the resignation was given to the limited liability
2 company at least thirty (30) days before the filing of the
3 resignation by mailing or delivering the notice to the limited
4 liability company at its address last known to the registered agent
5 and specifying the address therein.

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

10 3. If a domestic limited liability company fails to obtain and
11 designate a new registered agent before the resignation is
12 effective, the Secretary of State shall be deemed to be the
13 registered agent of the limited liability company until a new
14 registered agent is designated.

15 E. If a limited liability company has no registered agent or
16 the registered agent cannot be found, then service of process on the
17 limited liability company may be made by serving the Secretary of
18 State as its agent as provided in Section 2004 of Title 12 of the
19 Oklahoma Statutes.

20 SECTION 18. AMENDATORY 18 O.S. 2011, Section 2016, is
21 amended to read as follows:

22 Section 2016.

23 MANAGERS - DUTIES - GOOD FAITH - LIABILITY

24 Subject to the provisions of Section 2017 of this title:

1 1. A manager shall discharge the duties as a manager in good
2 faith, with the care an ordinary prudent person in a like position
3 could exercise under similar circumstances, and in the manner the
4 manager reasonably believes to be in the best interests of the
5 limited liability company;

6 2. In discharging the duties, a manager may rely on
7 information, opinions, reports or statements, including financial
8 statements and other financial data, if prepared or presented by:

- 9 a. one or more employees of the limited liability company
10 whom the manager reasonably believes to be reliable
11 and competent in the matters presented,
12 b. legal counsel, public accountants, or other persons as
13 to matters the manager reasonably believes are within
14 the person's professional or expert competence, or
15 c. a committee of managers of which the manager is not a
16 member if the manager reasonably believes the
17 committee merits confidence;

18 A manager is not acting in good faith if the manager has
19 knowledge concerning the matter in question that makes reliance
20 otherwise permitted by this paragraph unwarranted;

21 3. Unless otherwise provided in the operating agreement, a
22 manager has the power and authority to delegate to one or more other
23 persons any or all of the manager's rights ~~and~~, powers and duties to
24 manage and control the business and affairs of the limited liability

1 company, ~~including to delegate~~. Any delegation may be to the
2 agents, officers and employees of a manager ~~to~~ of the limited
3 liability company, and ~~to delegate~~ by a management agreement or
4 another agreement with, or otherwise to, other persons. A
5 delegation may be irrevocable if it states that it is irrevocable.
6 The delegation by a manager shall not cause the manager to cease to
7 be a manager of the limited liability company or cause the delegate
8 to be a manager of the limited liability company. No other
9 provision of the Oklahoma Limited Liability Company Act shall be
10 construed to restrict a manager's power and authority to delegate
11 any or all of the manager's rights, powers and duties to manage and
12 control the business and affairs of the limited liability company;

13 4. A manager is not liable for any action taken as a manager,
14 or any failure to take any action, if the manager performed the
15 duties of the office in compliance with the business judgment rule
16 as applied to directors and officers of a corporation; and

17 5. Except as otherwise provided in the articles of organization
18 or operating agreement, every manager must account to the limited
19 liability company and hold as trustee for it any profit or benefit
20 derived by the manager without the informed consent of the members
21 from any transaction connected with the conduct or winding up of the
22 limited liability company or from any personal use by the manager of
23 its property.

1 SECTION 19. AMENDATORY 18 O.S. 2011, Section 2054.1, as
2 amended by Section 52, Chapter 323, O.S.L. 2017 (18 O.S. Supp. 2019,
3 Section 2054.1), is amended to read as follows:

4 Section 2054.1.

5 CONVERSION OF AN ENTITY TO A LIMITED LIABILITY COMPANY

6 A. As used in this section, the term " entity" means a foreign
7 limited liability company, a domestic or foreign public benefit
8 limited liability company, a domestic or foreign corporation, a
9 domestic or foreign partnership whether general or limited, and
10 including a limited liability partnership and a limited liability
11 limited partnership, and any domestic or foreign unincorporated
12 nonprofit or for-profit association, trust or enterprise having
13 members or having outstanding shares of stock or other evidences of
14 financial, beneficial or membership interest therein, whether formed
15 by agreement or under statutory authority or otherwise.

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

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

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

4 2. The name, jurisdiction of formation of the entity, and type
5 of entity when formed and, if changed, its name, jurisdiction, and
6 type of entity immediately before filing of the articles of
7 conversion to limited liability company;

8 3. The name of the limited liability company as set forth in
9 its articles of organization filed in accordance with subsection B
10 of this section; and

11 4. The future effective date or time of the conversion to a
12 limited liability company, which shall be a date or time certain not
13 later than ninety (90) days after the filing, if it is not to be
14 effective upon the filing of the articles of conversion to a limited
15 liability company and the articles of organization.

16 D. Upon the effective date or time of the articles of
17 conversion to limited liability company and the articles of
18 organization, the entity shall be converted to a domestic limited
19 liability company and the limited liability company shall thereafter
20 be subject to all of the provisions of the Oklahoma Limited
21 Liability Company Act, except that notwithstanding Section 2004 of
22 this title, the existence of the limited liability company shall be
23 deemed to have commenced on the date the entity was formed.

1 E. The conversion of any entity into a domestic limited
2 liability company shall not be deemed to affect any obligations or
3 liabilities of the entity incurred before its conversion to a
4 domestic limited liability company or the personal liability of any
5 person incurred before the conversion.

6 F. When an entity has converted to a domestic limited liability
7 company under this section, the domestic limited liability company
8 shall be deemed to be the same entity as the converting entity. All
9 of the rights, privileges and powers of the entity that has
10 converted, and all property, real, personal and mixed, and all debts
11 due to the entity, as well as all other things and causes of action
12 belonging to the entity, shall remain vested in the domestic limited
13 liability company and shall be the property of the domestic limited
14 liability company, and the title to any real property vested by deed
15 or otherwise in the entity shall not revert or be in any way
16 impaired by reason of the conversion, but all rights of creditors
17 and all liens upon any property of the entity shall be preserved
18 unimpaired, and all debts, liabilities and duties of the entity that
19 has converted shall remain attached to the domestic limited
20 liability company and may be enforced against it to the same extent
21 as if the debts, liabilities and duties had been incurred or
22 contracted by it in its capacity as a domestic limited liability
23 company. The rights, privileges, powers and interests in property
24 of the entity, as well as the debts, liabilities and duties of the

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

5 G. Unless otherwise agreed or otherwise provided by any laws of
6 this state applicable to the converting entity, the converting
7 entity shall not be required to wind up its affairs or pay its
8 liabilities and distribute its assets, and the conversion shall not
9 be deemed to constitute a dissolution of the entity and shall
10 constitute a continuation of the existence of the converting entity
11 in the form of a domestic limited liability company.

12 H. Before filing the articles of conversion to a domestic
13 limited liability company with the Office of the Secretary of State,
14 the conversion shall be approved in the manner provided for by the
15 document, instrument, agreement or other writing, as the case may
16 be, governing the internal affairs of the entity and the conduct of
17 its business or by applicable law, as appropriate, and articles of
18 organization shall be approved by the same authorization required to
19 approve the conversion.

20 I. In a conversion of an entity to a domestic limited liability
21 company under this section, rights or securities of or memberships
22 or membership, economic or ownership interests in the entity that is
23 to be converted to a domestic limited liability company may be
24 exchanged for or converted into cash, property, or rights or

1 securities of or interests in the domestic limited liability company
2 or, in addition to or in lieu thereof, may be exchanged for or
3 converted into cash, property or rights or securities of or
4 memberships or membership, economic or ownership interests in
5 another domestic limited liability company or other entity.

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

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

16 SECTION 20. AMENDATORY 18 O.S. 2011, Section 2054.2, as
17 amended by Section 53, Chapter 323, O.S.L. 2017 (18 O.S. Supp. 2019,
18 Section 2054.2), is amended to read as follows:

19 Section 2054.2.

20 CONVERSION OF A LIMITED LIABILITY COMPANY TO AN ENTITY

21 A. A domestic limited liability company may convert to an
22 entity upon the authorization of such conversion in accordance with
23 this section. As used in this section, the term "entity" means a
24 foreign limited liability company, a domestic or foreign public

1 benefit limited liability company, a domestic or foreign
2 corporation, a domestic or foreign partnership whether general or
3 limited, and including a limited liability partnership and a limited
4 liability limited partnership, and any domestic or foreign
5 unincorporated nonprofit or for-profit association, trust or
6 enterprise having members or having outstanding shares of stock or
7 other evidences of financial, beneficial or membership interest
8 therein, whether formed by agreement or under statutory authority or
9 otherwise.

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

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

21 D. If the operating agreement does not specify the manner of
22 authorizing a conversion of the limited liability company or a
23 merger or consolidation that involves the limited liability company
24 as a constituent party and does not prohibit a conversion of the

1 limited liability company, the conversion shall be authorized by the
2 approval of a majority of the membership interest or, if there is
3 more than one class or group of members, then by a majority of the
4 membership interest in each class or group of members.

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

11 E. Unless otherwise agreed, the conversion of a domestic
12 limited liability company to another entity pursuant to this section
13 shall not require the limited liability company to wind up its
14 affairs or pay its liabilities and distribute its assets, and the
15 conversion shall not constitute a dissolution of the limited
16 liability company.

17 F. In a conversion of a domestic limited liability company to
18 an entity under this section, rights or securities of or interests
19 in the domestic limited liability company which are to be converted
20 may be exchanged for or converted into cash, property, rights or
21 securities of or memberships or membership, economic or ownership
22 interests in the entity to which the domestic limited liability
23 company is being converted or, in addition to or in lieu thereof,
24 may be exchanged for or converted into cash, property, rights or

1 securities of or memberships or membership, economic or ownership
2 interests in another entity or may be canceled.

3 G. If the governing act of ~~the~~ a domestic entity to which the
4 limited liability company is converting does not provide for the
5 filing of a conversion notice with the Secretary of State or the
6 limited liability company is converting to a foreign entity,
7 articles of conversion executed in accordance with Section 2006 of
8 this title, shall be filed in the Office of the Secretary of State
9 in accordance with Section 2007 of this title. The articles of
10 conversion shall state:

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

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

16 3. The name and type of entity to which the limited liability
17 company is converting and its jurisdiction of formation, if a
18 foreign entity;

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

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

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

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

13 H. Upon the filing of a conversion notice with the Secretary of
14 State, whether under subsection G of this section or under the
15 governing act of the domestic entity to which the limited liability
16 company is converting, the filing of any formation document required
17 by the governing act of the domestic entity to which the limited
18 liability company is converting, and payment to the Secretary of
19 State of all prescribed fees, the Secretary of State shall certify
20 that the limited liability company has filed all documents and paid
21 all required fees, and thereupon the domestic limited liability
22 company shall cease to exist as a limited liability company of this
23 state. The Secretary of State's certificate shall be prima facie
24

1 evidence of the conversion by the domestic limited liability
2 company.

3 I. The conversion of a domestic limited liability company to an
4 entity under this section and the resulting cessation of its
5 existence as a domestic limited liability company shall not be
6 deemed to affect any obligations or liabilities of the limited
7 liability company incurred before the conversion or the personal
8 liability of any person incurred before the conversion, nor shall it
9 be deemed to affect the choice of law applicable to the limited
10 liability company with respect to matters arising before the
11 conversion.

12 J. When a domestic limited liability company has converted to
13 an entity under this section, the entity shall be deemed to be the
14 same entity as the limited liability company. All of the rights,
15 privileges and powers of the domestic limited liability company that
16 has converted, and all property, real, personal and mixed, and all
17 debts due to the limited liability company, as well as all other
18 things and causes of action belonging to the limited liability
19 company, shall remain vested in the entity to which the domestic
20 limited liability company has converted and shall be the property of
21 the entity, and the title to any real property vested by deed or
22 otherwise in the domestic limited liability company shall not revert
23 or be in any way impaired by reason of the conversion; but all
24 rights of creditors and all liens upon any property of the limited

1 liability company shall be preserved unimpaired, and all debts,
2 liabilities and duties of the limited liability company that has
3 converted shall remain attached to the entity to which the domestic
4 limited liability company has converted, and may be enforced against
5 it to the same extent as if ~~said~~ the debts, liabilities and duties
6 had originally been incurred or contracted by it in its capacity as
7 the entity. The rights, privileges, powers and interests in
8 property of the domestic limited liability company that has
9 converted, as well as the debts, liabilities and duties of the
10 limited liability company, shall not be deemed, as a consequence of
11 the conversion, to have been transferred to the entity to which the
12 limited liability company has converted for any purpose of the laws
13 of this state.

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

18 SECTION 21. NEW LAW A new section of law to be codified
19 in the Oklahoma Statutes as Section 2061 of Title 18, unless there
20 is created a duplication in numbering, reads as follows:

21 PUBLIC BENEFIT LIMITED LIABILITY COMPANIES.

22 A. Sections 20 through 26 of this act shall be known and may be
23 cited as the "Oklahoma Public Benefit Limited Liability Company Act"
24 and within such sections as this act.

1 B. A "public benefit limited liability company" is a for-profit
2 limited liability company formed under and subject to the
3 requirements of the Oklahoma Limited Liability Company Act,
4 including a professional limited liability company, that is intended
5 to produce a public benefit or public benefits and to operate in a
6 responsible and sustainable manner as provided under this act. A
7 public benefit limited liability company is formed by filing
8 articles of organization as required under the Oklahoma Limited
9 Liability Company Act and further by stating in the heading of its
10 articles of organization that it is a public benefit limited
11 liability company and by setting forth one or more public benefits
12 to be promoted by the limited liability company in its articles of
13 organization. The operating agreement of a public benefit limited
14 liability company may not contain any provision inconsistent with
15 this act.

16 C. "Public benefit" means a positive effect, or reduction of
17 negative effects, on one or more categories of persons, entities,
18 communities or interests, other than members in their capacities as
19 members, including effects of an artistic, charitable, cultural,
20 economic, educational, environmental, literary, medical, religious,
21 scientific or technological nature. "Public benefit provisions"
22 means the provisions of the articles of organization or an operating
23 agreement contemplated by this act.

24

SECTION 22. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2062 of Title 18, unless there is created a duplication in numbering, reads as follows:

CERTAIN AMENDMENTS AND MERGERS; VOTES REQUIRED.

A. Upon the approval of members or other holders who own at least two-thirds (2/3) of the then outstanding equity interests entitled to vote:

1. An existing domestic limited liability company, including a professional limited liability company, may become a public benefit limited liability company by amending its articles of organization to conform to the public benefit provisions of subsection B of Section 20 of this act; or

2. A domestic entity that is not a public benefit limited liability company may become a public benefit limited liability company through a merger, consolidation, exchange or conversion in which the surviving or resulting entity is a public benefit limited liability company whose articles of organization conform to the public benefit provisions of subsection B of Section 20 of this act.

B. "domestic entity" is a limited liability company, corporation, partnership whether general or limited, and including a limited liability partnership and a limited liability limited partnership, an entity subject to the Professional Entity Act, or any unincorporated nonprofit or for-profit association, trust or enterprise having members or having outstanding shares of stock or

1 other evidences of financial, beneficial or membership interest
2 therein, whether formed by agreement or under statutory authority or
3 otherwise, formed under the laws of this jurisdiction.

4 C. A public benefit limited liability company may not, without
5 the approval of members who own at least two-thirds (2/3) of the
6 then outstanding membership interests of the limited liability
7 company entitled to vote:

8 1. Amend its articles of organization to delete, add or amend a
9 provision required by subsection B of Section 20 of this act;

10 2. Merge or consolidate with or exchange or convert into
11 another entity if, as a result of such merger, consolidation,
12 exchange or conversion, the membership interests in such limited
13 liability company would become, or be converted into or exchanged
14 for the right to receive, membership interests or other equity
15 interests in a domestic or foreign limited liability company or
16 other entity that is not a public benefit limited liability company
17 or similar entity, the articles of organization or operating
18 agreement, or similar governing document, of which does not contain
19 provisions identifying a public benefit or public benefits
20 comparable in all material respects to those set forth in the
21 articles of organization of such limited liability company as
22 contemplated by subsection B of Section 20 of this act; or
23 3. Cease to be a public benefit limited liability company under
24 the provisions of this act.

1 SECTION 23. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 2063 of Title 18, unless there
3 is created a duplication in numbering, reads as follows:

4 DUTIES OF MEMBERS OR MANAGERS.

5 A. The members or managers or other persons with authority to
6 manage or direct the business and affairs of a public benefit
7 limited liability company shall manage or direct the business and
8 affairs of the public benefit limited liability company in a manner
9 that balances the pecuniary interests of the members, the best
10 interests of those materially affected by the limited liability
11 company's conduct, and the specific public benefit or public
12 benefits set forth in its articles of organization. Unless
13 otherwise provided in an operating agreement, no member, manager or
14 other person with authority to manage or direct the business and
15 affairs of the public benefit limited liability company shall have
16 any liability for monetary damages for the failure to manage or
17 direct the business and affairs of the public benefit limited
18 liability company as provided in this subsection.

19 B. A member or manager of a public benefit limited liability
20 company or any other person with authority to manage or direct the
21 business and affairs of the public benefit limited liability company
22 shall not, by virtue of the public benefit provisions or subsection
23 B of Section 20 of this act, have any duty to any person on account
24 of any interest of such person in the public benefit or public

1 benefits set forth in its articles of organization or operating
2 agreement or on account of any interest materially affected by the
3 limited liability company's conduct and, with respect to a decision
4 implicating the balance requirement in subsection A of this section,
5 will be deemed to satisfy such person's fiduciary duties to members
6 and the limited liability company if such person's decision is both
7 informed and disinterested and not such that no person of ordinary,
8 sound judgment would approve.

9 SECTION 24. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 2064 of Title 18, unless there
11 is created a duplication in numbering, reads as follows:

12 PERIODIC STATEMENTS AND THIRD-PARTY CERTIFICATION.

13 A public benefit limited liability company shall no less than
14 biennially provide its members with a statement as to the limited
15 liability company's promotion of the public benefit or public
16 benefits set forth in its articles of organization and as to the
17 best interests of those materially affected by the limited liability
18 company's conduct. The statement shall include:

19 1. The objectives that have been established to promote such
20 public benefit or public benefits and interests;

21 2. The standards that have been adopted to measure the limited
22 liability company's progress in promoting such public benefit or
23 public benefits and interests;

24

1 3. Objective factual information based on those standards
2 regarding the limited liability company's success in meeting the
3 objectives for promoting such public benefit or public benefits and
4 interests; and

5 4. An assessment of the limited liability company's success in
6 meeting the objectives and promoting such public benefit or public
7 benefits and interests.

8 SECTION 25. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 2065 of Title 18, unless there
10 is created a duplication in numbering, reads as follows:

11 DERIVATIVE SUITS.

12 Members of a public benefit limited liability company or
13 assignees of membership interests in a public benefit limited
14 liability company owning individually or collectively, as of the
15 date of instituting such derivative suit, at least two percent (2%)
16 of the then-current membership interests of the limited liability
17 company may maintain a derivative lawsuit to enforce the
18 requirements set forth in subsection A of Section 22 of this act.

19 SECTION 26. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 2066 of Title 18, unless there
21 is created a duplication in numbering, reads as follows:

22 NO EFFECT ON OTHER LIMITED LIABILITY COMPANIES.
23
24

1 This act shall not affect a statute or rule of law that is
2 applicable to a limited liability company that is not a public
3 benefit limited liability company.

4 SECTION 27. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 2067 of Title 18, unless there
6 is created a duplication in numbering, reads as follows:

7 ACCOMPLISHMENT BY OTHER MEANS.

8 The provisions of this act shall not be construed to limit the
9 accomplishment by any other means permitted by law of the formation
10 or operation of a limited liability company that is formed or
11 operated for a public benefit, including a limited liability company
12 that is designated as a public benefit limited liability company,
13 that is not a public benefit limited liability company.

14 SECTION 28. AMENDATORY 54 O.S. 2011, Section 500-114A,
15 is amended to read as follows:

16 Section 500-114A.

17 OFFICE AND AGENT FOR SERVICE OF PROCESS

18 (a) A limited partnership shall designate and continuously
19 maintain in this state:

20 (1) an office, which need not be a place of its activity in
21 this state; and

22 (2) an agent for service of process.

23 (b) A foreign limited partnership shall designate and
24 continuously maintain in this state an agent for service of process.

1 (c) An agent for service of process of a limited partnership or
2 foreign limited partnership must be an individual who is a resident
3 of this state or a corporation, limited liability company, or
4 general or limited partnership, including a limited liability
5 partnership or a limited liability limited partnership, formed in or
6 authorized to do business in this state. A domestic limited
7 partnership may be its own agent.

8 SECTION 29. This act shall become effective November 1, 2020.

9 Passed the Senate the 11th day of March, 2020.

10
11 _____
12 Presiding Officer of the Senate

13 Passed the House of Representatives the ____ day of _____,
14 2020.

15
16 _____
17 Presiding Officer of the House
18 of Representatives
19
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