

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 57th Legislature (2019)

4 ENGROSSED SENATE
5 BILL NO. 642

By: Montgomery of the Senate

and

Kannady of the House

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8
9 An Act relating to stock and nonstock corporations;
10 applying the Oklahoma General Corporation Act to
11 nonstock corporations; providing exceptions; defining
12 terms; amending 18 O.S. 2011, Sections 1006, 1007,
13 1008, 1013, 1027, as last amended by Section 1,
14 Chapter 1, O.S.L. 2013, 1035, 1041, 1049, 1060, 1065,
15 1071, 1072, 1075.2, 1075.3, 1076, 1083, 1084, 1085,
16 1086, 1087, 1090.2, 1090.4, 1090.5, 1092, 1097,
17 1100.1 and 1100.2 (18 O.S. Supp. 2018, Section 1027),
18 which relate to the Oklahoma General Corporation Act;
19 modifying content requirements for certificate of
20 incorporation; clarifying application to nonstock
21 corporations; modifying execution requirements for
22 certain documents; modifying certain powers related
23 to bylaws; expanding certain voting power for bylaws;
24 clarifying procedures for board committees; providing
25 deferred effective times for board action; modifying
26 certain procedures for nonstock corporations;
27 clarifying that nonstock corporations have no capital
28 stock; limiting ability of nonstock corporations to
29 redeem membership interests; clarifying that nonstock
30 corporations do not pay dividends; providing for
31 voting rights of nonstock corporation members;
32 modifying definitions; modifying rights to examine
33 certain records; requiring certain applicant for
34 custodianship to provide copy of application to the
35 Attorney General; modifying applicability of certain
36 notice requirements; clarifying applicability of
37 requirements for certain amendment; providing
38 procedures and requirements for merger of parent
39 entity and subsidiary corporation or corporations;

1 describing application of merger provisions to
2 nonstock corporations; modifying merger or
3 consolidation procedures for domestic nonstock
4 nonprofit corporations; defining term; providing for
5 interpretation of references relating to constituent
6 nonstock corporations; providing for merger or
7 consolidation of corporations with other entities;
8 modifying definitions; modifying agreement
9 requirements; modifying contents of certificate of
10 merger or consolidation; providing for merger or
11 consolidation of other entities into domestic
12 corporations; providing for interpretation of certain
13 references; modifying required contents of certain
14 certificates of conversion; requiring Secretary of
15 State to retain certain information for certain time;
16 placing restrictions on merger of charitable entity
17 with other entity; expanding who may vote on certain
18 sales, leases and exchanges by nonstock corporations;
19 modifying procedure for dissolution of nonstock
20 corporation; modifying notice requirements for
21 rejection of claims by a nonstock corporation;
22 specifying applicability of certain distribution
23 provisions; updating statutory references; providing
24 for codification; and providing an effective date.

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

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

APPLICATION OF ACT TO NONSTOCK CORPORATIONS

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

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

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

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

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

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

13 1. This subsection or to paragraph 4 of subsection A and
14 paragraphs 1 and 2 of subsection B of Section 1006, subsection A of
15 Section 1013, Sections 1027, 1035, 1060 and 1073, subsection B of
16 Section 1075, and Sections 1076, 1077, 1083, 1084, 1085, 1086, 1087,
17 1092, 1097, 1119 and 1120 of Title 18 of the Oklahoma Statutes,
18 which apply to nonstock corporations by their terms; and

19 2. Sections 1032, 1033, 1034, 1036, 1037, subsection D of 1038,
20 1039, 1042, 1043, 1044, 1045, 1046, 1047, 1056, 1057, 1058, 1059,
21 1061, 1064, 1067, 1075.1, 1078, 1079, 1081, 1082, 1083.1, 1090.3,
22 1095, 1096, 1130 through 1138, 1142, 1159 and subsection A of 1161
23 of Title 18 of the Oklahoma Statutes.

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

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

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

8 D. For purposes of the Oklahoma General Corporation Act:

9 1. A "charitable nonstock corporation" is any nonprofit
10 nonstock corporation that is exempt from taxation under Section
11 501(c)(3) of the United States Internal Revenue Code [26 U.S.C.
12 Section 501(c)(3)], or any successor provisions;

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

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

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

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

23 SECTION 2. AMENDATORY 18 O.S. 2011, Section 1006, is
24 amended to read as follows:

1 Section 1006. CERTIFICATE OF INCORPORATION; CONTENTS

2 A. The certificate of incorporation shall set forth:

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

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

15 b. names of partnerships whether general or limited, or
16 domestic or foreign, then in good standing or
17 registered or which were in good standing or
18 registered at any time during the preceding three (3)
19 years,

20 c. names of limited liability companies, whether domestic
21 or foreign, then in good standing or registered or
22 which were in good standing or registered at any time
23 during the preceding three (3) years,
24

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

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

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

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

4. If the corporation is to be authorized to issue only one class of stock, the total number of shares of stock which the corporation shall have authority to issue and the par value of each of such shares, or a statement that all such shares are to be without par value. If the corporation is to be authorized to issue more than one class of stock, the certificate of incorporation shall set forth the total number of shares of all classes of stock which the corporation shall have authority to issue and the number of

1 shares of each class, and shall specify each class the shares of
2 which are to be without par value and each class the shares of which
3 are to have par value and the par value of the shares of each such
4 class. The provisions of this paragraph shall not apply to
5 corporations which are not organized for profit and which are not to
6 have authority to issue capital stock. In the case of such
7 corporations, the fact that they are not to have authority to issue
8 capital stock shall be stated in the certificate of incorporation.
9 The provisions of this paragraph shall not apply to nonstock
10 corporations. In the case of nonstock corporations, the fact that
11 they are not authorized to issue capital stock shall be stated in
12 the certificate of incorporation. The conditions of membership, or
13 other criteria for identifying members, of nonstock corporations
14 shall likewise be stated in the certificate of incorporation or the
15 bylaws. Nonstock corporations shall have members, but the failure
16 to have members shall not affect otherwise valid corporate acts or
17 work a forfeiture or dissolution of the corporation. Nonstock
18 corporations may provide for classes or groups of members having
19 relative rights, powers and duties, and may make provision for the
20 future creation of additional classes or groups of members having
21 such relative rights, powers and duties as may from time to time be
22 established, including rights, powers and duties senior to existing
23 classes and groups of members. Except as otherwise provided in the
24 Oklahoma General Corporation Act, nonstock corporations may also

1 provide that any member or class or group of members shall have
2 full, limited, or no voting rights or powers, including that any
3 member or class or group of members shall have the right to vote on
4 a specified transaction even if that member or class or group of
5 members does not have the right to vote for the election of members
6 of the governing body of the corporation. Voting by members of a
7 nonstock corporation may be on a per capita, number, financial
8 interest, class, group, or any other basis set forth. The
9 provisions referred to in the three preceding sentences may be set
10 forth in the certificate of incorporation or the bylaws. If neither
11 the certificate of incorporation nor the bylaws of a nonstock
12 corporation state the conditions of membership, or other criteria
13 for identifying members, the members of the corporation shall be
14 deemed to be those entitled to vote for the election of the members
15 of the governing body pursuant to the certificate of incorporation
16 or bylaws of such corporation or otherwise until thereafter
17 otherwise provided by the certificate of incorporation or the
18 bylaws;

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

21 6. If the powers of the incorporator or incorporators are to
22 terminate upon the filing of the certificate of incorporation, the
23 names and mailing addresses of the persons who are to serve as
24

1 directors until the first annual meeting of shareholders or until
2 their successors are elected and qualify; ~~and~~

3 7. If the corporation is not for profit:

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

6 b. the name and mailing address of each ~~trustee or~~
7 ~~director~~ member of the governing body,

8 c. the number of ~~trustees or directors~~ members of the
9 governing body to be elected at the first meeting, and

10 d. in the event the corporation is a church, the street
11 address of the location of the church.

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

15 8. If the corporation is a charitable nonstock and does not
16 otherwise provide in its certificate of incorporation:

17 a. that the corporation is organized exclusively for
18 charitable, religious, educational, and scientific
19 purposes including, for such purposes, the making of
20 distributions to organizations that qualify as exempt
21 organizations under section 501(c)(3) of the Internal
22 Revenue Code, or the corresponding section of any
23 future federal tax code,

1 b. that upon the dissolution of the corporation, its
2 assets shall be distributed for one or more exempt
3 purposes within the meaning of section 501(c)(3) of
4 the Internal Revenue Code, or the corresponding
5 section of any future federal tax code, for a public
6 purpose, and

7 c. that the corporation complies with the requirements in
8 paragraph 7 of this subsection.

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

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

23 2. The following provisions, in substantially the following
24 form:

1 a. for a corporation, other than a nonstock corporation:

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

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

8 b. for a nonstock corporation:

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

1 majority in number representing three-fourths (3/4) in
2 value of the creditors or class of creditors, and/or
3 of the members or class of members of this
4 corporation, as the case may be, agree to any
5 compromise or arrangement and to any reorganization of
6 this corporation as a consequence of such compromise
7 or arrangement, the compromise or arrangement and the
8 reorganization, if sanctioned by the court to which
9 the application has been made, shall be binding on all
10 the creditors or class of creditors, and/or on all the
11 members or class of members, of this corporation, as
12 the case may be, and also on this corporation";

13 3. Such provisions as may be desired granting to the holders of
14 the stock of the corporation, or the holders of any class or series
15 of a class thereof, the preemptive right to subscribe to any or all
16 additional issues of stock of the corporation of any or all classes
17 or series thereof, or to any securities of the corporation
18 convertible into such stock. No shareholder shall have any
19 preemptive right to subscribe to an additional issue of stock or to
20 any security convertible into such stock unless, and except to the
21 extent that, such right is expressly granted to him in the
22 certificate of incorporation. Preemptive rights, if granted, shall
23 not extend to fractional shares;
24

1 4. Provisions requiring, for any corporate action, the vote of
2 a larger portion of the stock or of any class or series thereof, or
3 of any other securities having voting power, or a larger number of
4 the directors, than is required by the provisions of ~~this act~~ the
5 Oklahoma General Corporation Act;

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

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

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

- 20 a. for any breach of the director's duty of loyalty to
21 the corporation or its shareholders,
22 b. for acts or omissions not in good faith or which
23 involve intentional misconduct or a knowing violation
24 of law,

1 c. under Section 1053 of this title, or

2 d. for any transaction from which the director derived an
3 improper personal benefit.

4 No such provision shall eliminate or limit the liability of a
5 director for any act or omission occurring before the date when such
6 provision becomes effective.

7 C. It shall not be necessary to set forth in the certificate of
8 incorporation any of the powers conferred on corporations by the
9 provisions of ~~this act~~ the Oklahoma General Corporation Act.

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

23 SECTION 3. AMENDATORY 18 O.S. 2011, Section 1007, is
24 amended to read as follows:

1 Section 1007.

2 EXECUTION, ACKNOWLEDGMENT, FILING AND EFFECTIVE DATE OF ORIGINAL
3 CERTIFICATE OF INCORPORATION AND OTHER INSTRUMENTS; EXCEPTIONS

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

9 1. The certificate of incorporation and any other instrument to
10 be filed before the election of the initial board of directors, if
11 the initial directors were not named in the certificate of
12 incorporation, shall be signed by the incorporator or incorporators,
13 or in case of any other instrument, the incorporator's or
14 incorporators' successors and assigns. If any incorporator is not
15 available ~~by reason of death, incapacity, unknown address, or~~
16 ~~refusal or neglect to act~~, then any other instrument may be signed,
17 with the same effect as if the incorporator had signed it, by any
18 person for whom or on whose behalf the incorporator, in executing
19 the certificate of incorporation, was acting directly or indirectly
20 as employee or agent; provided that the other instrument shall state
21 that the incorporator is not available and the reason therefor, that
22 the incorporator in executing the certificate of incorporation was
23 acting directly or indirectly as employee or agent for or on behalf
24

1 of the person, and that the person's signature on the instrument is
2 otherwise authorized and not wrongful;

3 2. All other instruments shall be ~~executed~~ signed:

- 4 a. ~~by the chair or vice-chair of the board of directors,~~
5 ~~or by the president, or by a vice-president, and~~
6 ~~attested by the secretary or an assistant secretary,~~
7 ~~or by officers as may be duly authorized to exercise~~
8 ~~the duties, respectively, ordinarily exercised by the~~
9 ~~president or vice-president and by the secretary or an~~
10 ~~assistant secretary of a~~ any authorized officer of the
11 corporation,
- 12 b. if it appears from the instrument that there are no
13 such officers, then by a majority of the directors or
14 by those directors designated by the board,
- 15 c. if it appears from the instrument that there are no
16 such officers or directors, then by the holders of
17 record, or those designated by the holders of record,
18 of a majority of all outstanding shares of stock, or
- 19 d. by the holders of record of all outstanding shares of
20 stock.

21 B. Whenever any provision of ~~this act~~ the Oklahoma General
22 Corporation Act requires any instrument to be acknowledged, that
23 requirement is satisfied by either:
24

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

8 2. The signature, without more, of the person or persons
9 signing the instrument, in which case the signature or signatures
10 shall constitute the affirmation or acknowledgment of the signatory,
11 under penalty of perjury, that the instrument is his or her act and
12 deed or the act and deed of the corporation, as the case may be, and
13 that the facts stated therein are true.

14 C. Whenever any provision of ~~this act~~ the Oklahoma General
15 Corporation Act requires any instrument to be filed in accordance
16 with the provisions of this section or with the provisions of ~~this~~
17 ~~act~~ the Oklahoma General Corporation Act, the requirement means
18 that:

19 1. One signed instrument shall be delivered to the Office of
20 the Secretary of State;

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

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

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

15 D. Any instrument filed in accordance with the provisions of
16 subsection C of this section shall be effective upon its filing
17 date. Any instrument may provide that it is not to become effective
18 until a specified time subsequent to the time it is filed, but that
19 date shall not be later than a time on the ninetieth day after the
20 date of its filing. If any instrument filed in accordance with
21 subsection C of this section provides for a future effective date or
22 time and if the transaction is terminated or its terms are amended
23 to change the future effective date or time prior to the future
24 effective date or time, the instrument shall be terminated or

1 amended by the filing, prior to the future effective date or time
2 set forth in the instrument, of a certificate of termination or
3 amendment of the original instrument, executed in accordance with
4 subsection A of this section, which shall identify the instrument
5 which has been terminated or amended and shall state that the
6 instrument has been terminated or the manner in which it has been
7 amended.

8 E. If another section of ~~this act~~ the Oklahoma General
9 Corporation Act specifically prescribes a manner of executing,
10 acknowledging, or filing a specified instrument or a time when an
11 instrument shall become effective which differs from the
12 corresponding provisions of this section, then the provisions of the
13 other section shall govern.

14 F. Whenever any instrument authorized to be filed with the
15 Secretary of State under any provision of this title has been so
16 filed and is an inaccurate record of the corporate action therein
17 referred to, or was defectively or erroneously executed, sealed, or
18 acknowledged, the instrument may be corrected by filing with the
19 Secretary of State a certificate of correction of the instrument
20 which shall be executed, acknowledged and filed in accordance with
21 the provisions of this section. The certificate of correction shall
22 specify the inaccuracy or defect to be corrected and shall set forth
23 the portion of the instrument in corrected form. The corrected
24 instrument shall be effective as of the date the original instrument

1 was filed, except as to those persons who are substantially and
2 adversely affected by the correction and as to those persons the
3 corrected instrument shall be effective from the filing date of the
4 corrected instrument.

5 G. If any instrument authorized to be filed with the Secretary
6 of State pursuant to any provision of this title is filed
7 inaccurately or defectively, or is erroneously executed, sealed, or
8 acknowledged, or is otherwise defective in any respect, the
9 Secretary of State shall have no liability to any person for the
10 preclearance for filing, the acceptance for filing, or the filing
11 and indexing of such instrument.

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

17 I. 1. If:

18 a. (1) together with the actual delivery of an
19 instrument and tender of the required taxes and
20 fees, there is delivered to the Secretary of
21 State a separate affidavit, which in its heading
22 shall be designated as an affidavit of
23 extraordinary condition, attesting, on the basis
24 of personal knowledge of the affiant or a

1 reliable source of knowledge identified in the
2 affidavit, that an earlier effort to deliver the
3 instrument and tender taxes and fees was made in
4 good faith, specifying the nature, date and time
5 of the good faith effort and requesting that the
6 Secretary of State establish the date and time as
7 the filing date of the instrument, or

8 (2) upon the actual delivery of an instrument and
9 tender of the required taxes and fees, the
10 Secretary of State in his or her discretion
11 provides a written waiver of the requirement for
12 an affidavit stating that it appears to the
13 Secretary of State that an earlier effort to
14 deliver the instrument and tender the taxes and
15 fees was made in good faith and specifying the
16 date and time of the effort, and

17 b. the Secretary of State determines that an
18 extraordinary condition existed at that date and time,
19 that the earlier effort was unsuccessful as a result
20 of the existence of an extraordinary condition, and
21 that the actual delivery and tender were made within a
22 reasonable period, not to exceed two (2) business
23 days, after the cessation of the extraordinary
24 condition,

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

5 2. For purposes of this subsection, an extraordinary condition
6 means: any emergency resulting from an attack on, invasion or
7 occupation by foreign military forces of, or disaster, catastrophe,
8 war or other armed conflict, revolution or insurrection, or rioting
9 or civil commotion in, the United States or a locality in which the
10 Secretary of State conducts its business or in which the good faith
11 effort to deliver the instrument and tender the required taxes and
12 fees is made, or the immediate threat of any of the foregoing; or
13 any malfunction or outage of the electrical or telephone service to
14 the Secretary of State's office, or weather or other condition in or
15 about a locality in which the Secretary of State conducts its
16 business, as a result of which the Secretary of State's office is
17 not open for the purpose of the filing of instruments under ~~this act~~
18 the Oklahoma General Corporation Act or the filing cannot be
19 effected without extraordinary effort. The Secretary of State may
20 require such proof as it deems necessary to make the determination
21 required under subparagraph b of paragraph 1 of this subsection, and
22 any determination shall be conclusive in the absence of actual
23 fraud.

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

14 SECTION 4. AMENDATORY 18 O.S. 2011, Section 1008, is
15 amended to read as follows:

16 Section 1008. CERTIFICATE OF INCORPORATION; DEFINITION

17 The term "certificate of incorporation", as used in the Oklahoma
18 General Corporation Act, unless the context requires otherwise,
19 includes not only the original certificate of incorporation filed to
20 create a corporation but also all other certificates, agreements of
21 merger or consolidation, plans of reorganization, or other
22 instruments, howsoever designated, which are filed pursuant to the
23 provisions of Sections ~~6, 23 through 26, 32, 76 through 80, 81~~
24 ~~through 87, or 118 of this act~~ 1006, 1023 through 1026, 1032, 1076

1 through 1087, 1090.2, or 1118 through 1120 of this title, or any
2 other section of ~~Title 18 of the Oklahoma Statutes~~ this title, and
3 which have the effect of amending or supplementing in some respect a
4 corporation's ~~original~~ certificate of incorporation.

5 SECTION 5. AMENDATORY 18 O.S. 2011, Section 1013, is
6 amended to read as follows:

7 Section 1013. BYLAWS

8 A. The original or other bylaws of a corporation may be
9 adopted, amended or repealed by the incorporators, by the initial
10 directors of a corporation other than a nonstock corporation or
11 initial members of the governing body of a nonstock corporation if
12 they were named in the certificate of incorporation, or, before a
13 corporation other than a nonstock corporation has received any
14 payment for any of its stock, by its board of directors. After a
15 corporation other than a nonstock corporation has received any
16 payment for any of its stock, except as otherwise provided in its
17 certificate of incorporation, the power to adopt, amend or repeal
18 bylaws shall be in the ~~board of directors, or, in~~ shareholders
19 entitled to vote. In the case of a nonstock corporation, the power
20 to adopt, amend or repeal bylaws shall be in its governing body.
21 Notwithstanding the foregoing, any corporation may, in its
22 certificate of incorporation, confer the power to adopt, amend or
23 repeal bylaws upon the directors or, in the case of a nonstock
24 corporation, upon its members. The fact that such power has been so

1 conferred upon the directors or members, as the case may be, shall
2 not divest the shareholders or governing body of the power, nor
3 limit their power to adopt, amend or repeal bylaws.

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

9 SECTION 6. AMENDATORY 18 O.S. 2011, Section 1027, as
10 last amended by Section 1, Chapter 1, O.S.L. 2013 (18 O.S. Supp.
11 2018, Section 1027), is amended to read as follows:

12 Section 1027.

13 BOARD OF DIRECTORS; POWERS; NUMBER; QUALIFICATIONS; TERMS
14 AND QUORUM; COMMITTEES; CLASSES OF DIRECTORS; ~~NOT FOR PROFIT~~
15 NONSTOCK CORPORATIONS; RELIANCE UPON BOOKS; ACTION WITHOUT MEETING;
16 ETC.

17 A. The business and affairs of every corporation organized in
18 accordance with the provisions of the Oklahoma General Corporation
19 Act shall be managed by or under the direction of a board of
20 directors, except as may be otherwise provided for in ~~this act~~ the
21 Oklahoma General Corporation Act or in the corporation's certificate
22 of incorporation. If any provision is made in the certificate of
23 incorporation, the powers and duties conferred or imposed upon the
24 board of directors by the provisions of ~~this act~~ the Oklahoma

1 General Corporation Act shall be exercised or performed to the
2 extent and by the person or persons stated in the certificate of
3 incorporation.

4 B. The board of directors of a corporation shall consist of one
5 or more members, each of whom shall be a natural person. The number
6 of directors shall be fixed by or in the manner provided for in the
7 bylaws, unless the certificate of incorporation fixes the number of
8 directors, in which case a change in the number of directors shall
9 be made only by amendment of the certificate. Directors need not be
10 shareholders unless so required by the certificate of incorporation
11 or the bylaws. The certificate of incorporation or bylaws may
12 prescribe other qualifications for directors. Each director shall
13 hold office until a successor is elected and qualified or until his
14 or her earlier resignation or removal. Any director may resign at
15 any time upon notice given in writing or by electronic transmission
16 to the corporation. A resignation is effective when the resignation
17 is delivered unless the resignation specifies a later effective date
18 or an effective date determined upon the happening of an event or
19 events. A resignation that is conditioned upon the director failing
20 to receive a specified vote for reelection as a director may provide
21 that it is irrevocable. A majority of the total number of directors
22 shall constitute a quorum for the transaction of business unless the
23 certificate of incorporation or the bylaws require a greater number.
24 ~~Except as provided in subsection C of this section, neither the~~

~~certificate of incorporation nor the bylaws may provide that a~~
~~quorum may~~ Unless the certificate of incorporation provides
otherwise, the bylaws may provide that a number less than a majority
shall constitute a quorum which in no case shall be less than one-
third (1/3) of the total number of directors. The vote of the
majority of the directors present at a meeting at which a quorum is
present shall be the act of the board of directors unless the
certificate of incorporation or the bylaws shall require a vote of a
greater number.

C. 1. The board of directors may designate one or more
committees consisting of one or more of the directors of the
corporation. The board may designate one or more directors as
alternate members of any committee, who may replace any absent or
disqualified member at any meeting of the committee. The bylaws may
provide that in the absence or disqualification of a member of a
committee, the member or members present at a meeting and not
disqualified from voting, whether or not the member or members
constitute a quorum, may unanimously appoint another member of the
board of directors to act at the meeting in the place of any absent
or disqualified member. Any committee, to the extent provided in
the resolution of the board of directors, or in the bylaws of the
corporation, shall have and may exercise all the powers and
authority of the board of directors in the management of the
business and affairs of the corporation, and may authorize the seal

1 of the corporation to be affixed to all papers which may require it;
2 but no committee shall have the power or authority to:

3 a. approve, adopt, or recommend to the shareholders any
4 action or matter, other than the election or removal
5 of directors, expressly required by ~~this act~~ the
6 Oklahoma General Corporation Act to be submitted to
7 shareholders for approval, or

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

9 2. Unless otherwise provided in the certificate of
10 incorporation, the bylaws or the resolution of the board of
11 directors designating the committee, a committee may create one or
12 more subcommittees, each subcommittee to consist of one or more
13 members of the committee, and delegate to a subcommittee any or all
14 of the powers and authority of the committee. Except for references
15 to committees and members of committees in subsection C of this
16 section, every reference in this title to a committee of the board
17 of directors or a member of a committee shall be deemed to include a
18 reference to a subcommittee or member of a subcommittee.

19 3. A majority of the directors then serving on a committee of
20 the board of directors or on a subcommittee of a committee shall
21 constitute a quorum for the transaction of business by the committee
22 or subcommittee, unless the certificate of incorporation, the
23 bylaws, a resolution of the board of directors or a resolution of a
24 committee that created the subcommittee requires a greater or lesser

1 number; provided that in no case shall a quorum be less than one-
2 third (1/3) of the directors then serving on the committee or
3 subcommittee. The vote of the majority of the members of a
4 committee or subcommittee present at a meeting at which a quorum is
5 present shall be the act of the committee or subcommittee, unless
6 the certificate of incorporation, the bylaws, a resolution of the
7 board of directors or a resolution of a committee that created the
8 subcommittee requires a greater number.

9 D. The directors of any corporation organized under ~~this act~~
10 the Oklahoma General Corporation Act, by the certificate of
11 incorporation or by an initial bylaw, or by a bylaw adopted by ~~the~~
12 ~~board of directors and approved by~~ a vote of the shareholders, may
13 be divided into one, two, or three classes; the term of office of
14 those of the first class to expire at the first annual meeting held
15 after the classification becomes effective; of the second class one
16 (1) year thereafter; of the third class two (2) years thereafter;
17 and at each annual election held after the classification becomes
18 effective, directors shall be chosen for a full term, as the case
19 may be, to succeed those whose terms expire. The certificate of
20 incorporation or bylaw provision dividing the directors into classes
21 may authorize the board of directors to assign members of the board
22 then in office to such classes when the classification becomes
23 effective. The certificate of incorporation may confer upon holders
24 of any class or series of stock the right to elect one or more

1 directors who shall serve for the term, and have voting powers as
2 shall be stated in the certificate of incorporation. The terms of
3 office and voting powers of the directors elected in the manner so
4 provided in the certificate of incorporation may be greater than or
5 less than those of any other director or class of directors. In
6 addition, the certificate of incorporation may confer upon one or
7 more directors, whether or not elected separately by the holders of
8 any class or series of stock, voting powers greater than or less
9 than those of other directors. Any such provision conferring
10 greater or lesser voting power shall apply to voting in any
11 committee, unless otherwise provided in the certificate of
12 incorporation or bylaws. If the certificate of incorporation
13 provides that directors elected by the holders of a class or series
14 of stock shall have more or less than one vote per director on any
15 matter, every reference in ~~this act~~ the Oklahoma General Corporation
16 Act to a majority or other proportion of directors shall refer to a
17 majority or other proportion of the votes of the directors.

18 E. A member of the board of directors, or a member of any
19 committee designated by the board of directors, in the performance
20 of the member's duties, shall be fully protected in relying in good
21 faith upon the records of the corporation and upon information,
22 opinions, reports, or statements presented to the corporation by any
23 of the corporation's officers or employees, or committees of the
24 board of directors, or by any other person as to matters the member

1 reasonably believes are within the officer's, employee's,
2 committee's or other person's competence and who have been selected
3 with reasonable care by or on behalf of the corporation.

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

6 1. Any action required or permitted to be taken at any meeting
7 of the board of directors, or of any committee thereof may be taken
8 without a meeting if all members of the board or committee, as the
9 case may be, consent thereto in writing or by electronic
10 transmission, and the writing or writings or electronic transmission
11 or transmissions are filed with the minutes of proceedings of the
12 board or committee; and the filing shall be in paper form if the
13 minutes are maintained in paper form and shall be in electronic form
14 if the minutes are maintained in electronic form; and any person
15 whether or not then a director may provide, whether through
16 instruction to an agent or otherwise, that a consent to action will
17 be effective at a future time (including a time determined upon the
18 happening of an event), no later than sixty (60) days after such
19 instruction is given or such provision is made and such consent
20 shall be deemed to have been given for purposes of this subsection
21 at such effective time so long as such person is then a director and
22 did not revoke the consent prior to such time; and any such consent
23 shall be revocable prior to its becoming effective;
24

1 2. The board of directors of any corporation organized in
2 accordance with the provisions of ~~this act~~ the Oklahoma General
3 Corporation Act may hold its meetings, and have an office or
4 offices, outside of this state;

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

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

14 G. 1. The certificate of incorporation or bylaws of any
15 nonstock corporation ~~organized in accordance with the provisions of~~
16 ~~this act which is not authorized to issue capital stock~~ may provide
17 that less than one-third (1/3) of the members of the governing body
18 may constitute a quorum thereof and may otherwise provide that the
19 business and affairs of the corporation shall be managed in a manner
20 different from that provided for in this section, which differences
21 may include additional classes of directors, longer terms of
22 service, the use of less than unanimous consents for board action,
23 and permitting the Chair of the Board of Directors to designate
24 committees and appoint members.

1 2. Except as may be otherwise provided by the certificate of
2 incorporation, the provisions of this section shall apply to such a
3 corporation, and when so applied, all references to the board of
4 directors, to members thereof, and to shareholders shall be deemed
5 to refer to the governing body of the corporation, the members
6 thereof and the members of the corporation, respectively; and all
7 references to stock, capital stock, or shares shall be deemed to
8 refer to memberships of a nonprofit nonstock corporation and to
9 membership interests of any other nonstock corporation.

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

- 14 a. unless the certificate of incorporation otherwise
15 provides, in the case of a corporation whose board is
16 classified as provided for in subsection D of this
17 section, shareholders may effect such removal only for
18 cause, or
- 19 b. in the case of a corporation having cumulative voting,
20 if less than the entire board is to be removed, no
21 director may be removed without cause if the votes
22 cast against the director's removal would be
23 sufficient to elect the director if then cumulatively
24 voted at an election of the entire board of directors,

1 or, if there are classes of directors, at an election
2 of the class of directors of which the director is a
3 part.

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

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

16 SECTION 7. AMENDATORY 18 O.S. 2011, Section 1035, is
17 amended to read as follows:

18 Section 1035.

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

21 Any corporation, by resolution of its board of directors, may
22 determine that only a part of the consideration which shall be
23 received by the corporation for any of the shares of its capital
24 stock which it shall issue from time to time shall be capital; but,

1 in case any of the shares issued shall be shares having a par value,
2 the amount of the part of such consideration so determined to be
3 capital shall be in excess of the aggregate par value of the shares
4 issued for such consideration having a par value, unless all the
5 shares issued shall be shares having a par value, in which case the
6 amount of the part of such consideration so determined to be capital
7 need be only equal to the aggregate par value of such shares. In
8 each such case the board of directors shall specify in dollars the
9 part of such consideration which shall be capital. If the board of
10 directors shall not have determined, at the time of issue of any
11 shares of the capital stock of the corporation issued for cash or
12 within sixty (60) days after the issue of any shares of the capital
13 stock of the corporation issued for consideration other than cash,
14 what part of the consideration for such shares shall be capital, the
15 capital of the corporation in respect of such shares shall be an
16 amount equal to the aggregate par value of such shares having a par
17 value, plus the amount of the consideration for such shares without
18 par value. The amount of the consideration so determined to be
19 capital in respect of any shares without par value shall be the
20 stated capital of such shares. The capital of the corporation may
21 be increased from time to time by resolution of the board of
22 directors directing that a portion of the net assets of the
23 corporation in excess of the amount so determined to be capital be
24 transferred to the capital account. The board of directors may

1 direct that the portion of such net assets so transferred shall be
2 treated as capital in respect of any shares of the corporation of
3 any designated class or classes. The excess, if any, at any given
4 time, of the net assets of the corporation over the amount so
5 determined to be capital shall be surplus. "Net assets" means the
6 amount by which total assets exceed total liabilities. Capital and
7 surplus are not liabilities for this purpose. Notwithstanding
8 anything in this section to the contrary, for purposes of this
9 section and Sections 1041 and 1049 of this title, the capital of any
10 nonstock corporation shall be deemed to be zero.

11 SECTION 8. AMENDATORY 18 O.S. 2011, Section 1041, is
12 amended to read as follows:

13 Section 1041.

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

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

20 1. Purchase or redeem its own shares of capital stock for cash
21 or other property when the capital of the corporation is impaired or
22 when the purchase or redemption would cause any impairment of the
23 capital of the corporation, except that a corporation other than a
24 nonstock corporation may purchase or redeem out of capital any of

1 its own shares which are entitled upon any distribution of its
2 assets, whether by dividend or in liquidation, to a preference over
3 another class or series of its stock, or, if no shares entitled to a
4 preference are outstanding, any of its own shares if such shares
5 will be retired upon their acquisition and the capital of the
6 corporation reduced in accordance with the provisions of Sections
7 1078 and 1079 of this title. Nothing in this subsection shall
8 invalidate or otherwise affect a note, debenture, or other
9 obligation of a corporation given by it as consideration for its
10 acquisition by purchase, redemption, or the exchange of its shares
11 of stock if at the time such note, debenture, or obligation was
12 delivered by the corporation its capital was not then impaired or
13 did not thereby become impaired;

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

17 3. ~~Redeem~~

18 a. In the case of a corporation other than a nonstock
19 corporation, redeem any of its shares unless their
20 redemption is authorized by subsection B of Section
21 1032 of this title and then only in accordance with
22 the provisions of that section and the certificate of
23 incorporation, or

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

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

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

19 D. Shares which have been called for redemption shall not be
20 deemed to be outstanding shares for the purpose of voting or
21 determining the total number of shares entitled to vote on any
22 matter on and after the date on which written notice of redemption
23 has been sent to holders thereof and a sum sufficient to redeem
24 those shares has been irrevocably deposited or set aside to pay the

1 redemption price to the holders of the shares upon surrender of the
2 certificates.

3 SECTION 9. AMENDATORY 18 O.S. 2011, Section 1049, is
4 amended to read as follows:

5 Section 1049. DIVIDENDS; PAYMENT; WASTING ASSET CORPORATIONS

6 A. The directors of every corporation, subject to any
7 restrictions contained in its certificate of incorporation, may
8 declare and pay dividends upon the shares of its capital stock, ~~or~~
9 ~~to its members if the corporation is a nonstock corporation,~~ either
10 out of its surplus, as defined in and computed in accordance with
11 the provisions of Sections 1035 and 1079 of this title, or in case
12 there is no surplus, out of its net profits for the fiscal year in
13 which the dividend is declared or the preceding fiscal year. If the
14 capital of the corporation, computed in accordance with the
15 provisions of Sections 1035 and 1079 of this title, shall have been
16 diminished by depreciation in the value of its property, or by
17 losses, or otherwise, to an amount less than the aggregate amount of
18 the capital represented by the issued and outstanding stock of all
19 classes having a preference upon the distribution of assets, the
20 directors of the corporation shall not declare and pay out of the
21 net profits any dividends upon any shares of any classes of its
22 capital stock until the deficiency in the amount of capital
23 represented by the issued and outstanding stock of all classes
24 having a preference upon the distribution of assets shall have been

1 repaired. Nothing in this subsection shall invalidate or otherwise
2 affect a note, debenture, or other obligation of the corporation
3 paid by it as a dividend on shares of its stock, or any payment made
4 thereon, if at the time the note, debenture, or obligation was
5 delivered by the corporation, the corporation had either surplus or
6 net profits as provided in this subsection from which the dividend
7 could lawfully have been paid.

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

18 SECTION 10. AMENDATORY 18 O.S. 2011, Section 1060, is
19 amended to read as follows:

20 Section 1060.

21 VOTING RIGHTS OF MEMBERS OF NONSTOCK CORPORATIONS; QUORUM;
22 PROXIES

23 A. The provisions of Sections 1056 through 1059 and 1061 of
24 this title shall not apply to nonstock corporations ~~not authorized~~

1 ~~to issue stock~~, except that ~~subsection~~ subsections A and D of
2 Section 1056 and subsections C ~~and~~, D and E of Section 1057 of this
3 title shall apply to nonstock corporations, and, when so applied,
4 all references therein to shareholders and to the board of directors
5 shall be deemed to refer to the members and the governing body of a
6 nonstock corporation, respectively; and all references to stock,
7 capital stock, or shares thereof shall be deemed to refer to
8 memberships of a nonprofit nonstock corporation and to membership
9 interests of any other nonstock corporation.

10 B. Unless otherwise provided for in the certificate of
11 incorporation or the bylaws of a nonstock corporation, and subject
12 to subsection F of this section, each member shall be entitled at
13 every meeting of members to one vote on each matter submitted to a
14 vote of members. A member may exercise such voting rights in person
15 or by proxy, but no proxy shall be voted on after three (3) years
16 from its date, unless the proxy provides for a longer period.

17 C. Unless otherwise provided for in the Oklahoma General
18 Corporation Act, the certificate of incorporation or bylaws of a
19 nonstock corporation may specify the number of members having voting
20 power who shall be present or represented by proxy at any meeting in
21 order to constitute a quorum for, and the votes that shall be
22 necessary for, the transaction of any business. In the absence of
23 such specification in the certificate of incorporation or bylaws of
24 a nonstock corporation:

1 1. One-third (1/3) of the members of the corporation shall
2 constitute a quorum at a meeting of the members;

3 2. In all matters other than the election of the governing body
4 of the corporation, the affirmative vote of a majority of the
5 members present in person or represented by proxy at the meeting and
6 entitled to vote on the subject matter shall be the act of the
7 members, unless the vote of a greater number is required by the
8 provisions of the Oklahoma General Corporation Act, the certificate
9 of incorporation or bylaws; ~~and~~

10 3. Members of the governing body shall be elected by a
11 plurality of the votes of the members of the corporation present in
12 person or represented by proxy at the meeting and entitled to vote;
13 and

14 4. When a separate vote by a class or group or classes or
15 groups is required, a majority of the members of such class or group
16 or classes or groups, present in person or represented by proxy,
17 shall constitute a quorum entitled to take action with respect to
18 that vote on that matter and, in all matters other than the election
19 of members of the governing body, the affirmative vote of the
20 majority of the members of such class or group or classes or groups
21 present in person or represented by proxy at the meeting shall be
22 the act of such class or group or classes or groups.

23 D. If the election of the governing body of any nonstock
24 corporation shall not be held on the day designated by the bylaws,

1 the governing body shall cause the election to be held as soon
2 thereafter as convenient. The failure to hold such an election at
3 the designated time shall not work any forfeiture or dissolution of
4 the corporation, but the district court may summarily order such an
5 election to be held upon the application of any member of the
6 corporation. At any election pursuant to such order the persons
7 entitled to vote in such election who shall be present at such
8 meeting, either in person or by proxy, shall constitute a quorum for
9 such meeting, notwithstanding any provision of the certificate of
10 incorporation or the bylaws of the corporation to the contrary.

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

17 F. Except as otherwise provided in the certificate of
18 incorporation, in the bylaws, or by resolution of the governing
19 body, the record date for any meeting or corporate action shall be
20 deemed to be the date of such meeting or corporate action; provided,
21 however, that no record date may precede any action by the governing
22 body fixing such record date.

23 SECTION 11. AMENDATORY 18 O.S. 2011, Section 1065, is
24 amended to read as follows:

1 Section 1065. INSPECTION OF BOOKS AND RECORDS

2 A. As used in this section:

3 1. "Shareholder" means~~+~~

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

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

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

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

15 ~~4.~~ 3. "Subsidiary" means any entity directly or indirectly
16 owned, in whole or in part, by the corporation of which the
17 shareholder is a shareholder and over the affairs of which the
18 corporation directly or indirectly exercises control, and includes
19 but is not limited to corporations, partnerships, limited
20 partnerships, limited liability partnerships, limited liability
21 companies, statutory trusts and joint ventures.

22 B. Any shareholder, in person or by attorney or other agent,
23 upon written demand under oath stating the purpose thereof, shall
24

1 have the right during the usual hours for business to inspect for
2 any proper purpose, and to make copies and extracts from:

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

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

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

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

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

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

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

20 In every instance where the shareholder is other than a ~~records~~
21 record holder of stock in a stock corporation, or a member of a
22 nonstock corporation, the demand under oath shall state the person's
23 status as a shareholder or member, be accompanied by documentary
24 evidence of beneficial ownership of the stock or beneficial

1 membership, and state that the documentary evidence is a true and
2 correct copy of what it purports to be. A proper purpose shall mean
3 a purpose reasonably related to a person's interest as a shareholder
4 or member. In every instance where an attorney or other agent shall
5 be the person who seeks the right to inspection, the demand under
6 oath shall be accompanied by a power of attorney or other writing
7 which authorizes the attorney or other agent to so act on behalf of
8 the shareholder. The demand under oath shall be directed to the
9 corporation at its registered office in this state or at its
10 principal place of business.

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

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

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

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

22 D. Any director, ~~including a member of the governing body of a~~
23 ~~nonstock corporation,~~ shall have the right to examine the
24 corporation's stock ledger, a list of its shareholders, and its

1 other books and records for a purpose reasonably related to his or
2 her position as a director. The district court may summarily order
3 the corporation to permit the director to inspect any and all books
4 and records, the stock ledger, and the list of shareholders and to
5 make copies or extracts therefrom. The court, in its discretion,
6 may prescribe any limitations or conditions with reference to the
7 inspection, or award other or further relief as the court may deem
8 just and proper. The burden of proof shall be upon the corporation
9 to establish that the inspection the director seeks is for an
10 improper purpose.

11 SECTION 12. AMENDATORY 18 O.S. 2011, Section 1071, is
12 amended to read as follows:

13 Section 1071.

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

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

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

24

1 2. ~~the~~ The business of the corporation is suffering or is
2 threatened with irreparable injury because the directors are so
3 divided respecting the management of the affairs of the corporation
4 that the required vote for action by the board of directors cannot
5 be obtained and the shareholders are unable to terminate this
6 division; or

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

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

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

21 SECTION 13. AMENDATORY 18 O.S. 2011, Section 1072, is
22 amended to read as follows:

23 Section 1072. POWERS OF COURT IN ELECTIONS OF DIRECTORS
24

1 A. The district court, in any proceeding instituted pursuant to
2 the provisions of Section ~~56, 60 or 70~~ 1056, 1060 or 1070 of this
3 ~~act~~ title, may determine the right and power of persons claiming to
4 own stock, or in the case of a corporation without capital stock, of
5 the persons claiming to be members, to vote at any meeting of the
6 shareholders ~~or members~~.

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

15 SECTION 14. AMENDATORY 18 O.S. 2011, Section 1075.2, is
16 amended to read as follows:

17 Section 1075.2.

18 ELECTRONIC NOTICE; EFFECTIVENESS; REVOCATION OF CONSENT

19 A. Without limiting the manner of which notice otherwise may be
20 given effectively to shareholders, any notice to shareholders given
21 by the corporation under any provision of ~~this act~~ the Oklahoma
22 General Corporation Act, the certificate of incorporation, or the
23 bylaws shall be effective if given by a form of electronic
24 transmission consented to by the shareholder to whom the notice is

1 given. The consent shall be revocable by the shareholder by written
2 notice to the corporation. The consent shall be deemed revoked if:

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

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

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

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

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

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

20 a. the posting, and

21 b. the giving of the separate notice; and

22 4. Any other form of electronic transmission, when directed to
23 the shareholder in accordance with the shareholder's consent.
24

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

6 C. For purposes of ~~this act~~ the Oklahoma General Corporation
7 Act, "electronic transmission" means any form of communication, not
8 directly involving the physical transmission of paper, that creates
9 a record that may be retained, retrieved, and reviewed by a
10 recipient thereof, and that may be directly reproduced in paper form
11 by such a recipient through an automated process.

12 ~~D. This section shall apply to a domestic corporation that is~~
13 ~~not authorized to issue capital stock, and when so applied, all~~
14 ~~references to shareholders shall be deemed to refer to members of~~
15 ~~such a corporation.~~

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

18 SECTION 15. AMENDATORY 18 O.S. 2011, Section 1075.3, is
19 amended to read as follows:

20 Section 1075.3.

21 SINGLE WRITTEN NOTICE TO SHAREHOLDERS SHARING AN ADDRESS

22 A. Without limiting the manner by which notice otherwise may be
23 given effectively to shareholders, any notice to shareholders given
24 by the corporation under any provision of ~~this act~~ the Oklahoma

1 General Corporation Act, the certificate of incorporation, or the
2 bylaws shall be effective if given by a single written notice to
3 shareholders who share an address if consented to by the
4 shareholders at that address to whom such notice is given. Any such
5 consent shall be revocable by the shareholder by written notice to
6 the corporation.

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

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

16 ~~D.~~ This section shall not apply to Section 1045, 1111, 1119 or
17 1120 of ~~Title 18 of the Oklahoma Statutes~~ this title.

18 SECTION 16. AMENDATORY 18 O.S. 2011, Section 1076, is
19 amended to read as follows:

20 Section 1076.

21 AMENDMENT OF CERTIFICATE OF INCORPORATION BEFORE RECEIPT OF
22 PAYMENT FOR STOCK

23 A. Before a corporation has received any payment for any of its
24 stock, or before it has any members, as applicable, it may amend its

1 certificate of incorporation at any time or times, in any and as
2 many respects as may be desired, so long as its certificate of
3 incorporation as amended would contain only such provisions as it
4 would be lawful and proper to insert in an original certificate of
5 incorporation filed at the time of filing the amendment.

6 B. The amendment of certificate of incorporation authorized by
7 the provisions of this section shall be adopted by a majority of the
8 incorporators, if directors were not named in the original
9 certificate of incorporation or have not yet been elected, or, if
10 directors were named in the original certificate of incorporation or
11 have been elected and have qualified, by a majority of the
12 directors. A certificate setting forth the amendment and certifying
13 that the corporation has not received any payment for any of its
14 stock, or that the corporation has no members, as applicable, and
15 that the amendment has been duly adopted in accordance with the
16 provisions of this section shall be executed, acknowledged and filed
17 in accordance with the provisions of Section ~~7~~ 1007 of this ~~act~~
18 title. Upon such filing, the corporation's certificate of
19 incorporation shall be deemed to be amended accordingly as of the
20 date on which the original certificate of incorporation became
21 effective, except as to those persons who are substantially and
22 adversely affected by the amendment and as to those persons the
23 amendment shall be effective from the filing date.

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

SECTION 17. AMENDATORY 18 O.S. 2011, Section 1083, is amended to read as follows:

Section 1083.

MERGER OF PARENT CORPORATION AND SUBSIDIARY CORPORATION OR
~~SUBSIDIARIES~~ CORPORATIONS

A. In any case in which at least ninety percent (90%) of the outstanding shares of each class of stock of a corporation or corporations, other than a corporation which has in its certificate of incorporation the provision required by division (1) of subparagraph g of paragraph 1 of subsection G of Section 1081 of this title of which class there are outstanding shares that, absent this subsection, would be entitled to vote on such merger, is owned by ~~another~~ a domestic corporation or a foreign corporation, and one ~~of the corporations is a corporation of this state and the other or others are corporations of this state or of any other state or states or of the District of Columbia, and the laws of the other state or states or of the District of Columbia permit a corporation of that jurisdiction to merge with a corporation of another jurisdiction, the corporation having such stock ownership may either merge the other~~ or more of such corporations is a domestic

1 corporation, unless the laws of the jurisdiction or jurisdictions
2 under which the foreign corporation or corporations are organized
3 prohibit such merger, the parent corporation may either merge the
4 subsidiary corporation or corporations into itself and assume all of
5 its or their obligations, or merge itself, or itself and one or more
6 of the other subsidiary corporations, into one of the other
7 subsidiary corporations by executing, acknowledging, and filing, in
8 accordance with the provisions of Section 1007 of this title, a
9 certificate of ownership and merger setting forth a copy of the
10 resolution of its board of directors to merge and the date of its
11 adoption; provided, however, that in case the parent corporation
12 shall not own all the outstanding stock of all the subsidiary
13 corporations which are parties to the merger, the resolution of the
14 board of directors of the parent corporation shall state the terms
15 and conditions of the merger, including the securities, cash,
16 property, or rights to be issued, paid, delivered, or granted by the
17 surviving corporation upon surrender of each share of the subsidiary
18 corporation or corporations not owned by the parent corporation or
19 the cancellation of some or all of the shares. Any of the terms of
20 the resolution of the board of directors to so merge may be made
21 dependent upon facts ascertainable outside of such resolution,
22 provided that the manner in which such facts shall operate upon the
23 terms of the resolution is clearly and expressly set forth in the
24 resolution. The term "facts", as used in the preceding sentence,

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. If the parent corporation is not the surviving
4 corporation, the resolution shall include provision for the pro rata
5 issuance of stock of the surviving corporation to the holders of the
6 stock of the parent corporation on surrender of any certificates
7 therefor, and the certificate of ownership and merger shall state
8 that the proposed merger has been approved by a majority of the
9 outstanding stock of the parent corporation entitled to vote thereon
10 at a meeting thereof duly called and held after twenty (20) days'
11 notice of the purpose of the meeting is mailed to each shareholder
12 at the shareholder's address as it appears on the records of the
13 corporation if the parent corporation is a domestic corporation ~~of~~
14 ~~this state~~ or shall state that the proposed merger has been adopted,
15 approved, certified, executed, and acknowledged by the parent
16 corporation in accordance with the laws under which it is organized
17 if the parent corporation is ~~not~~ a foreign corporation ~~of this~~
18 ~~state~~. If the surviving corporation ~~exists under the laws of the~~
19 ~~District of Columbia or any state other than this state~~ is a foreign
20 corporation, the provisions of subsection D of Section 1082 of this
21 title or subsection C of Section 1087 of this title, as applicable,
22 shall also apply to a merger pursuant to the provisions of this
23 section, and the terms and conditions of the merger shall obligate
24 the surviving corporation to provide the agreement, and take the

1 actions, required by subsection D of Section 1082 of this title or
2 subsection C of Section 1087 of this title, as applicable.

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

10 C. The provisions of subsection D of Section 1081 of this title
11 shall apply to a merger pursuant to the provisions of this section,
12 and the provisions of subsection E of Section 1081 of this title
13 shall apply to a merger pursuant to the provisions of this section
14 in which the surviving corporation is the subsidiary corporation and
15 is a domestic corporation ~~of this state~~. For purposes of this
16 subsection, references to "agreement of merger" in subsections D and
17 E of Section 1081 of this title shall mean the resolution of merger
18 adopted by the board of directors of the parent corporation. Any
19 merger which effects any changes other than those authorized by the
20 provisions of this section or made applicable by this subsection
21 shall be accomplished in accordance with the provisions of Section
22 1081 ~~or~~, 1082, 1083.1, 1085 or 1087 of this title. The provisions
23 of Section 1091 of this title shall not apply to any merger effected
24

1 pursuant to the provisions of this section, except as provided for
2 in subsection D of this section.

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

9 E. ~~A merger may be effected pursuant to the provisions of this~~
10 ~~section although one or more of the corporate parties to the merger~~
11 ~~is a corporation organized under the laws of a jurisdiction other~~
12 ~~than one of the United States; provided, that the laws of that~~
13 ~~jurisdiction permit a corporation of that jurisdiction to merge with~~
14 ~~a corporation of another jurisdiction~~ This section shall apply to
15 nonstock corporations if the parent corporation is such a
16 corporation and is the surviving corporation of the merger;
17 provided, however, that references to the directors of the parent
18 corporation shall be deemed to be references to members of the
19 governing body of the parent corporation, and references to the
20 board of directors of the parent corporation shall be deemed to be
21 references to the governing body of the parent corporation.

22 F. Nothing in this section shall be deemed to authorize the
23 merger of a corporation with a charitable nonstock corporation, if
24

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

3 SECTION 18. AMENDATORY 18 O.S. 2011, Section 1084, is
4 amended to read as follows:

5 Section 1084.

6 MERGER OR CONSOLIDATION OF DOMESTIC NONSTOCK, NOT FOR PROFIT
7 CORPORATIONS

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

16 B. Subject to subsection D of this section:

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

- 20 a. the terms and conditions of the merger or
21 consolidation,
22 b. the mode of carrying the same into effect,
23 c. ~~other provisions or facts required or permitted by~~
24 ~~this act to be stated in a certificate of~~

~~incorporation for nonstock corporations as can be~~
~~stated in the case of a merger or consolidation,~~
~~stated in an altered form as the circumstances of the~~
~~case require~~ in the case of a merger, such amendments
or changes in the certificate of incorporation of the
surviving corporation as are desired to be effected by
the merger, which amendments or changes may amend and
restate the certificate of incorporation of the
surviving corporation in its entirety, or, if no such
amendments or changes are desired, a statement that
the certificate of incorporation of the surviving
corporation shall be its certificate of incorporation,
d. in the case of a consolidation, that the certificate
of incorporation of the resulting corporation shall be
as is set forth in an attachment to the agreement,
~~d.~~
e. the manner, if any, of converting the memberships or
membership interests of each of the constituent
corporations into memberships or membership interests
of the corporation surviving or resulting from the
merger or consolidation, or of canceling some or all
of the memberships or membership interests if any
memberships or membership interests of any of the
constituent corporations are not to remain

1 outstanding, to be converted solely into memberships
2 or membership interests of the surviving or resulting
3 corporation or to be cancelled, the cash, property,
4 rights or securities of any other corporation or
5 entity which the holders of such memberships or
6 membership interests are to receive in exchange for,
7 or upon conversion of, such memberships or membership
8 interests, which cash, property, rights or securities
9 of any other corporation or entity may be in addition
10 to or in lieu of memberships or membership interests
11 to the surviving or resulting corporation, and

12 ~~e.~~

13 f. other details or provisions as are deemed desirable
14 including, without limiting the generality of the
15 foregoing, a provision for the payment of cash in lieu
16 of the issuance or recognition of fractional shares,
17 rights or other securities of any other corporation or
18 entity the shares, rights or other securities of which
19 are to be received in the merger or consolidation or
20 for some other arrangement with respect thereto,
21 consistent with Section 1036 of this title~~;~~ and

22 2. The agreement so adopted shall be executed and acknowledged
23 in accordance with Section 1007 of this title. Any of the terms of
24 the agreement of merger or consolidation may be made dependent upon

1 facts ascertainable outside of the agreement; provided, that the
2 manner in which the facts shall operate upon the terms of the
3 agreement is clearly and expressly set forth in the agreement of
4 merger or consolidation. The term "facts" as used in this
5 paragraph, includes, but is not limited to, the occurrence of any
6 event, including a determination or action by any person or body,
7 including the corporation.

8 C. ~~The~~ Subject to subsection D of this section, the agreement
9 shall be submitted to the members of each constituent corporation
10 ~~who have the right to vote for the election of the members of the~~
11 ~~governing body of their corporation,~~ at an annual or special meeting
12 for the purpose of acting on the agreement. ~~Notice~~ Due notice of
13 the time, place, and purpose of the meeting shall be mailed to each
14 member of each corporation who has the right to vote for the
15 election of the members of the governing body of the corporation and
16 to each other member who is entitled to vote on the merger under the
17 certificate of incorporation or the bylaws of such corporation, at
18 the member's address as it appears on the records of the corporation
19 at least twenty (20) days prior to the date of the meeting. The
20 notice shall contain a copy of the agreement or a brief summary
21 thereof, as the governing body shall deem advisable. At the
22 meeting, the agreement shall be considered and a vote ~~by ballot,~~ in
23 person or by proxy, taken for the adoption or rejection of the
24 agreement. If the agreement is adopted by a majority of the ~~voting~~

1 ~~power of voting~~ members of each corporation ~~shall be for the~~
2 ~~adoption of the agreement~~ entitled to vote for the election of the
3 members of the governing body of the corporation and any other
4 members entitled to vote on the merger under the certificate of
5 incorporation or the bylaws of such corporation, then that fact
6 shall be certified on the agreement by the officer of each
7 corporation performing the duties ordinarily performed by the
8 secretary or assistant secretary of a corporation; provided that
9 such certification on the agreement shall not be required if a
10 certificate of merger or consolidation is filed in lieu of filing
11 the agreement. The agreement shall be ~~executed, acknowledged and~~
12 adopted and certified by each constituent corporation in accordance
13 with this section, and it shall be filed, and shall become
14 effective, in accordance with the provisions of Section 1007 of this
15 title. The provisions of paragraphs 1 through 6 of subsection C of
16 Section 1081 of this title shall apply to a merger or consolidation
17 under this section, and the reference therein to "shareholder" shall
18 be deemed to include "member" hereunder.

19 D. ~~If~~ Notwithstanding subsection B or C of this section, if,
20 under the provisions of the certificate of incorporation or the
21 bylaws of any one or more of the constituent corporations, there
22 shall be no members who have the right to vote for the election of
23 the members of the governing body of the corporation, or for the
24 merger, other than the members of that the governing body

1 themselves, ~~the agreement duly entered into as provided for in~~
2 ~~subsection B of this section shall be submitted to the members of~~
3 ~~the governing body of the corporation or corporations at a meeting~~
4 ~~thereof. Notice of the meeting shall be mailed to the members of~~
5 ~~the governing body in the same manner as is provided in the case of~~
6 ~~a meeting of the members of a corporation. If at the meeting two-~~
7 ~~thirds (2/3) of the total number of members of the governing body~~
8 ~~shall vote by ballot, in person, for the adoption of the agreement,~~
9 no further action by the governing body or the members of such
10 corporation shall be necessary if the resolution approving an
11 agreement of merger or consolidation has been adopted by a majority
12 of all the members of the governing body thereof, and that fact
13 shall be certified on the agreement in the same manner as is
14 provided in the case of the adoption of the agreement by the vote of
15 the members of a corporation; provided that such certification on
16 the agreement shall not be required if a certificate of merger or
17 consolidation is filed in lieu of filing the agreement, and
18 thereafter the same procedure shall be followed to consummate the
19 merger or consolidation.

20 E. The provisions of subsection D of Section 1081 of this title
21 shall apply to a merger under this section; provided, however, that
22 references to the board of directors, to shareholders, and to shares
23 of a constituent corporation shall be deemed to be references to the
24 governing body of the corporation, to members of the corporation,

1 and to memberships or membership interests, as applicable,
2 respectively.

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

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

11 SECTION 19. AMENDATORY 18 O.S. 2011, Section 1085, is
12 amended to read as follows:

13 Section 1085.

14 MERGER OR CONSOLIDATION OF DOMESTIC AND FOREIGN NONSTOCK,

15 ~~NOT FOR PROFIT~~ CORPORATIONS; SERVICE OF PROCESS UPON

16 SURVIVING OR RESULTING CORPORATION

17 A. Any one or more nonstock, ~~not for profit~~ domestic
18 corporations ~~of this state~~ may merge or consolidate with one or more
19 other foreign nonstock, ~~not for profit~~ corporations ~~of any other~~
20 ~~state or states of the United States or of the District of Columbia,~~
21 ~~if the laws of such other state or states or of the District of~~
22 ~~Columbia permit a corporation of such jurisdiction to merge with a~~
23 ~~corporation of another jurisdiction,~~ unless the laws of the
24 jurisdiction or jurisdictions under which such foreign nonstock

1 corporation or corporations are organized prohibit such merger or
2 consolidation. The constituent corporations may merge into a single
3 surviving corporation, which may be any one of the constituent
4 corporations, or they may consolidate into a new resulting nonstock,
5 ~~not for profit~~ corporation formed by the consolidation, which may be
6 a corporation of the ~~state of incorporation~~ jurisdiction of
7 organization of any one of the constituent corporations, pursuant to
8 an agreement of merger or consolidation, as the case may be,
9 complying and approved in accordance with the provisions of this
10 section. ~~In addition, any one or more~~ The term "foreign nonstock
11 corporation" means a nonstock, not for profit corporations
12 corporation organized under the laws of any jurisdiction other than
13 ~~one of the United States may merge or consolidate with one or more~~
14 ~~nonstock, not for profit corporations of this state if the surviving~~
15 ~~or resulting corporation will be a corporation of this state, and if~~
16 ~~the laws under which the other corporation or corporations are~~
17 ~~formed permit a corporation of such jurisdiction to merge with a~~
18 ~~corporation of another jurisdiction~~ this state.

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

- 21 a. the terms and conditions of the merger or
22 consolidation,
23 b. the mode of carrying the same into effect,
24

- 1 c. in the case of a merger in which the surviving
2 corporation is a domestic corporation, such amendments
3 or changes in the certificate of incorporation of the
4 surviving corporation as are desired to be effected by
5 the merger, which amendments or changes may amend and
6 restate the certificate of incorporation of the
7 surviving corporation in its entirety, or, if no such
8 amendments or changes are desired, a statement that
9 the certificate of incorporation of the surviving
10 corporation shall be its certificate of incorporation,
11 d. in the case of a consolidation in which the resulting
12 corporation is a domestic corporation, that the
13 certificate of incorporation of the resulting
14 corporation shall be as is set forth in an attachment
15 to the agreement,
16 e. the manner, if any, of converting the memberships or
17 membership interests of each of the constituent
18 corporations into ~~members~~ memberships or membership
19 interests of the corporation surviving or resulting
20 from such merger or consolidation, or of canceling
21 some or all of the memberships or membership
22 interests, and if any memberships or membership
23 interests of any of the constituent corporations are
24 not to remain outstanding, to be converted solely into

1 memberships or membership interests of the surviving
2 or resulting corporation or to be cancelled, the cash,
3 property, rights or securities of any other
4 corporation or entity which the holders of such
5 memberships or membership interests are to receive in
6 exchange for, or upon conversion of, such memberships
7 or membership interests, which cash, property, rights
8 or securities of any other corporation or entity may
9 be in addition to or in lieu of memberships or
10 membership interests of the surviving or resulting
11 corporation,

12 ~~d.~~

13 f. such other details and provisions as shall be deemed
14 desirable including, without limiting the generality
15 of the foregoing, a provision for the payment of cash
16 in lieu of the issuance or recognition of fractional
17 shares, rights or other securities of any other
18 corporation or entity the shares, rights or other
19 securities of which are to be received in the merger
20 or consolidation, or for some other arrangement with
21 respect thereto, consistent with Section 1036 of this
22 title, and

23 ~~e.~~

1 g. such other provisions or facts as ~~shall then be~~
2 required to ~~be stated in a certificate of~~
3 ~~incorporation by the laws of the state which are~~
4 ~~stated in the agreement to be the laws that shall~~
5 ~~govern the surviving or resulting corporation and that~~
6 ~~can be stated in the case of a merger or consolidation~~
7 set forth in an agreement of merger or consolidation,
8 including any provision for amendment of the
9 certificate of incorporation or equivalent document,
10 or a surviving foreign nonstock corporation by the
11 laws of each jurisdiction under which any of the
12 foreign nonstock corporation are organized.

13 2. Any of the terms of the agreement of merger or consolidation
14 may be made dependent upon facts ascertainable outside of such
15 agreement, provided that the manner in which such facts shall
16 operate upon the terms of the agreement is clearly and expressly set
17 forth in the agreement of merger or consolidation. The term
18 "facts," as used in the preceding sentence includes, but is not
19 limited to, the occurrence of any event including a determination or
20 action by any person or body, including the corporation.

21 C. The agreement shall be adopted, approved, certified,
22 executed and acknowledged by each of the constituent corporations in
23 accordance with the laws under which it is ~~formed~~ organized and, in
24 the case of ~~an Oklahoma~~ domestic corporation, in the same manner as

1 is provided for in Section 1084 of this title. The agreement shall
2 be filed and shall become effective for all purposes of the laws of
3 this state when and as provided for in Section 1084 of this title
4 with respect to the merger of nonstock, ~~not for profit~~ domestic
5 corporations ~~of this state~~. Insofar as they may be applicable, the
6 provisions of paragraphs 1 through 9 of subsection C of Section 1082
7 of this title shall apply to a merger under this section, and the
8 reference therein to "shareholder" shall be deemed to include
9 "member" hereunder.

10 D. If the corporation surviving or resulting from the merger or
11 consolidation is ~~to be governed by the laws of any state other than~~
12 ~~this state~~ a foreign nonstock corporation, it shall agree that it
13 may be served with process in this state in any proceeding for
14 enforcement of any obligation of any constituent domestic
15 corporation ~~of this state~~, as well as for enforcement of any
16 obligation of the surviving or resulting corporation arising from
17 the merger or consolidation and shall irrevocably appoint the
18 Secretary of State as its agent to accept service of process in any
19 suit or other proceedings and shall specify the address to which a
20 copy of such process shall be mailed by the Secretary of State. In
21 the event of such service upon the Secretary of State in accordance
22 with the provisions of ~~this subsection~~ Section 2004 of Title 12 of
23 the Oklahoma Statutes, the Secretary of State shall immediately
24 notify such surviving or resulting corporation thereof by letter,

1 certified mail, return receipt requested, directed to such
2 corporation at its address so specified, unless such surviving or
3 resulting corporation shall have designated in writing to the
4 Secretary of State a different address for such purpose, in which
5 case it shall be mailed to the last address so designated. Such
6 letter shall enclose a copy of the process and any other papers
7 served upon the Secretary of State. It shall be the duty of the
8 plaintiff in the event of such service to serve process and any
9 other papers in duplicate, to notify the Secretary of State that
10 service is being made pursuant to the provisions of this subsection,
11 and to pay the Secretary of State the fee prescribed by paragraph 7
12 of Section 1142 of this title, which fee shall be taxed as part of
13 the costs in the proceeding if the plaintiff shall prevail therein.
14 The Secretary of State shall maintain an alphabetical record of any
15 such service setting forth the name of the plaintiff and defendant,
16 the title, docket number and nature of the proceeding in which
17 process has been served upon him, the fact that service has been
18 effected pursuant to the provisions of this subsection, the return
19 date thereof, and the date when the service was made. The Secretary
20 of State shall not be required to retain such information for a
21 period longer than five (5) years from his receipt of service of
22 process.

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

1 if the corporation surviving the merger is a domestic corporation ~~of~~
2 ~~this state.~~

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

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

16 SECTION 20. AMENDATORY 18 O.S. 2011, Section 1086, is
17 amended to read as follows:

18 Section 1086.

19 MERGER OR CONSOLIDATION OF DOMESTIC STOCK AND NONSTOCK
20 CORPORATIONS

21 A. Any one or more domestic nonstock corporations ~~of this~~
22 ~~state,~~ whether or not organized for profit, may merge or consolidate
23 with one or more domestic stock corporations ~~of this state,~~ whether
24 or not organized for profit. The constituent corporations may merge

1 into a single surviving corporation, which may be any one of the
2 constituent corporations, or they may consolidate into a new
3 resulting corporation formed by the consolidation, pursuant to an
4 agreement of merger or consolidation, as the case may be, complying
5 and approved in accordance with the provisions of this section. The
6 surviving constituent corporation or ~~a new~~ the resulting corporation
7 may be organized for profit or not organized for profit and may be a
8 stock corporation or a nonstock corporation.

9 B. The board of directors of each stock corporation which
10 desires to merge or consolidate and the governing body of each
11 nonstock corporation which desires to merge or consolidate shall
12 adopt a resolution approving an agreement of merger or
13 consolidation. The agreement shall state:

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

15 2. The mode carrying the same into effect;

16 3. ~~Such other provisions or facts required or permitted by this~~
17 ~~act to be stated in the certificate of incorporation as can be~~
18 ~~stated in the case of a merger or consolidation, stated in such~~
19 ~~altered form as the circumstances of the case require~~ In the case of
20 a merger, such amendments or changes in the certificate of
21 incorporation of the surviving corporation as are desired to be
22 effected by the merger, which amendments or changes may amend and
23 restate the certificate of incorporation of the surviving
24 corporation in its entirety, or, if no such amendments or changes

1 are desired, a statement that the certificate of incorporation of
2 the surviving corporation shall be its certificate of incorporation;

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

6 5. The manner, if any, of converting the shares of stock of a
7 stock corporation and the memberships or membership interests ~~of the~~
8 ~~members~~ of a nonstock corporation into shares or other securities of
9 a stock corporation or memberships or membership interests of a
10 nonstock corporation surviving or resulting from such merger or
11 consolidation, or of canceling some or all of the shares or
12 memberships or membership interests, and if any shares of any such
13 stock corporation or memberships or membership interests of any such
14 nonstock corporation are not to remain outstanding, to be converted
15 solely into shares or other securities of the stock corporation or
16 memberships or membership interests of the nonstock corporation
17 surviving or resulting from such merger or consolidation, or to be
18 canceled, the cash, property, rights or securities of any other
19 corporation or entity which the holders of shares of any such stock
20 corporation or memberships or membership interests of any such
21 nonstock corporation are to receive in exchange for, or upon
22 conversion of such shares or memberships or membership interests,
23 and the surrender of any certificates evidencing them, which cash,
24 property, rights or securities of any other corporation or entity

1 may be in addition to or in lieu of shares or other securities of
2 any stock corporation or memberships or membership interests of any
3 nonstock corporation surviving or resulting from such merger or
4 consolidation; and

5 ~~5.~~ 6. Such other details or provisions as are deemed desirable
6 including, without limiting the generality of the foregoing, a
7 provision for the payment of cash in lieu of the issuance or
8 recognition of fractional shares, rights or other securities of any
9 other corporation or entity the shares, rights or other securities
10 of which are to be received in the merger or consolidation, or for
11 some other arrangement with respect thereto, consistent with Section
12 1036 of this title.

13 ~~C. In a merger or consolidation provided for in this section,~~
14 ~~the interests of members of a constituent nonstock corporation may~~
15 ~~be treated in various ways so as to convert such interests into~~
16 ~~interests of value, other than shares of stock, in the surviving or~~
17 ~~resulting stock corporation or into shares of stock in the surviving~~
18 ~~or resulting stock corporation, voting or nonvoting, or into~~
19 ~~creditor interests or any other interests of value equivalent to~~
20 ~~their membership interests in their nonstock corporation. The~~
21 ~~voting rights of members of a constituent nonstock corporation need~~
22 ~~not be considered an element of value in measuring the reasonable~~
23 ~~equivalence of the value of the interests received in the surviving~~
24 ~~or resulting stock corporation by members of a constituent nonstock~~

1 ~~corporation, nor need the voting rights of shares of stock in a~~
2 ~~constituent stock corporation be considered as an element of value~~
3 ~~in measuring the reasonable equivalence of the value of the~~
4 ~~interests in the surviving or resulting nonstock corporations~~
5 ~~received by shareholders of a constituent stock corporation, and the~~
6 ~~voting or nonvoting shares of a stock corporation may be converted~~
7 ~~into voting or nonvoting regular, life, general, special or other~~
8 ~~type of membership, however designated, creditor interests or~~
9 ~~participating interests, in the nonstock corporation surviving or~~
10 ~~resulting from such merger or consolidation of a stock corporation~~
11 ~~and a nonstock corporation. Any of the terms of the agreement of~~
12 ~~merger or consolidation may be made dependent upon facts~~
13 ~~ascertainable outside of such agreement, provided that the manner in~~
14 ~~which such facts shall operate upon the terms of the agreement is~~
15 ~~clearly and expressly set forth in the agreement of merger or~~
16 ~~consolidation. The term "facts", as used in the preceding sentence~~
17 ~~includes, but is not limited to, the occurrence of any event,~~
18 ~~including a determination or action by any person or body, including~~
19 ~~the corporation.~~

20 D. The agreement, required by subsection B of this section in
21 the case of each constituent stock corporation, shall be adopted,
22 approved, certified, executed and acknowledged by each constituent
23 corporation in the same manner as is provided for in Section 1081 of
24 this title and, in the case of each constituent nonstock

1 corporation, shall be adopted, approved, certified, executed and
2 acknowledged by each of said constituent corporations in the same
3 manner as is provided for in Section 1084 of this title. The
4 agreement shall be filed and shall become effective for all purposes
5 of the laws of this state when and as provided for in Section 1081
6 of this title with respect to the merger of stock corporations of
7 this state. Insofar as they may be applicable, the provisions of
8 paragraphs 1 through 7 of subsection C of Section 1081 of this title
9 shall apply to a merger under this section, and the reference
10 therein to "shareholder" shall be deemed to include "member"
11 hereunder.

12 E. The provisions of subsection E of Section 1081 of this title
13 shall apply to a merger pursuant to the provisions of this section,
14 ~~if the surviving corporation is a corporation of this state.~~ The
15 provisions of ~~subsections C and~~ subsection D of Section 1081 of this
16 title shall apply to any constituent stock corporation participating
17 in a merger or consolidation pursuant to the provisions of this
18 section. The provisions of subsection F of Section 1081 of this
19 title shall apply to any constituent stock corporation participating
20 in a merger pursuant to the provisions of this section.

21 F. The provisions of subsection D of Section 1081 of this title
22 shall apply to a merger pursuant to the provisions of this section;
23 provided, however, that for purposes of a constituent nonstock
24 corporation, references to the board of directors, to shareholders,

1 and to shares of a constituent corporation shall be deemed to be
2 references to the governing body of the corporation, to members of
3 the corporation, and to memberships or membership interests, as
4 applicable, respectively.

5 G. Nothing in this section shall be construed to authorize the
6 merger of a charitable nonstock corporation into a stock
7 corporation, if the charitable status of such nonstock corporation
8 would thereby be lost or impaired; but a stock corporation may be
9 merged into a charitable nonstock corporation which shall continue
10 as the surviving corporation.

11 SECTION 21. AMENDATORY 18 O.S. 2011, Section 1087, is
12 amended to read as follows:

13 Section 1087.

14 MERGER OR CONSOLIDATION OF DOMESTIC AND FOREIGN STOCK AND
15 NONSTOCK CORPORATIONS

16 A. Any one or more domestic corporations ~~of this state~~, whether
17 stock or nonstock corporations and whether or not organized for
18 profit, may merge or consolidate with one or more ~~other corporations~~
19 ~~of any other state or states of the United States or of the District~~
20 ~~of Columbia, whether stock or nonstock corporations and whether or~~
21 ~~not organized for profit, if the laws under which the other~~
22 ~~corporation or corporations are formed shall permit a corporation of~~
23 ~~such jurisdiction to merge with a corporation of another~~
24 ~~jurisdiction~~ foreign corporations, unless the laws of the

1 jurisdiction or jurisdictions under which such foreign corporation
2 or corporations are organized prohibit such merger or consolidation.
3 The constituent corporations may merge into a single surviving
4 corporation, which may be any one of the constituent corporations,
5 or they may consolidate into a new resulting corporation formed by
6 the consolidation, which may be a corporation of the ~~place of~~
7 ~~incorporation~~ jurisdiction of organization of any one of the
8 constituent corporations, pursuant to an agreement of merger or
9 consolidation, as the case may be, complying and approved in
10 accordance with the provisions of this section. The surviving or
11 ~~new~~ resulting corporation may be either a domestic or foreign stock
12 corporation or a ~~membership~~ domestic or foreign nonstock
13 corporation, as shall be specified in the agreement of merger or
14 consolidation required by the provisions of subsection B of this
15 section. For purposes of this section, the term "foreign
16 corporation" includes a nonstock corporation organized under the
17 laws of any jurisdiction other than this state.

18 B. The method and procedure to be followed by the constituent
19 corporations so merging or consolidating shall be as prescribed in
20 Section ~~86~~ 1086 of this ~~act~~ title in the case of ~~Oklahoma~~ domestic
21 corporations. The agreement of merger or consolidation shall be as
22 provided in Section 1086 of this title and also set forth such other
23 ~~matters or provisions or facts~~ as ~~shall then be~~ required to be set
24 forth in ~~certificates of incorporation~~ an agreement of merger or

1 consolidation, including any provision for amendment of the
2 certificate of incorporation or equivalent document of a surviving
3 foreign corporation, by the laws of the ~~state~~ jurisdiction or
4 jurisdictions which are stated in the agreement to be the laws ~~which~~
5 ~~shall govern the surviving or resulting corporation and that can be~~
6 ~~stated in the case of a merger or consolidation~~ under which the
7 foreign corporation or corporations are organized. The agreement,
8 in the case of foreign corporations, shall be adopted, approved,
9 certified, executed and acknowledged by each of the constituent
10 foreign corporations in accordance with the laws under which each is
11 ~~formed~~ organized.

12 C. The requirements of the provisions of subsection D of
13 Section ~~82~~ 1082 of this ~~act~~ title as to the appointment of the
14 Secretary of State to receive process and the manner of serving the
15 same in the event the surviving or ~~new~~ resulting corporation is ~~to~~
16 ~~be governed by the laws of any other state~~ a foreign corporation
17 shall also apply to mergers or consolidations effected under this
18 section and such appointment, if any, shall be included in the
19 certificate of merger or consolidation, if any, filed pursuant to
20 ~~the provisions~~ subsection B of this section. The provisions of
21 subsection E of Section ~~81~~ 1081 of this ~~act~~ title shall apply to
22 mergers effected pursuant to the provisions of this section if the
23 surviving corporation is a domestic corporation ~~of this state.~~ The
24 provisions of subsection D of Section ~~81~~ 1081 of this ~~act~~ title

1 shall apply to any constituent stock corporation participating in a
2 merger ~~of~~ or consolidation pursuant to the provisions of this
3 section; provided, however, that for purposes of a constituent
4 nonstock corporation, references to the board of directors, to
5 shareholders, and to shares shall be deemed to be references to the
6 governing body of the corporation, to members of the corporation,
7 and to memberships or membership interests of the corporation, as
8 applicable, respectively. The provisions of subsection F of Section
9 ~~81~~ 1081 of this ~~act~~ title shall apply to any constituent stock
10 corporation participating in a merger pursuant to the provisions of
11 this section.

12 D. Nothing in this section shall be construed to authorize the
13 merger of a charitable nonstock corporation into a stock
14 corporation, if the charitable status of such nonstock corporation
15 would thereby be lost or impaired but a stock corporation may be
16 merged into a charitable nonstock corporation which shall continue
17 as the surviving corporation.

18 SECTION 22. AMENDATORY 18 O.S. 2011, Section 1090.2, is
19 amended to read as follows:

20 Section 1090.2.

21 MERGER OR CONSOLIDATION OF A DOMESTIC CORPORATION AND ~~BUSINESS~~
22 AN ENTITY

23 A. Any one or more domestic corporations ~~of this state~~ may
24 merge or consolidate with one or more ~~business~~ domestic or foreign

1 ~~entities, of this state or of any other state or states of the~~
2 ~~United States, or of the District of Columbia, unless the laws of~~
3 ~~the other state or states or the District of Columbia forbid unless~~
4 the laws of the jurisdiction or jurisdictions under which such
5 entity or entities are formed prohibit the merger or consolidation.
6 A corporation or corporations and one or more ~~business~~ entities may
7 merge with or into a surviving corporation, which may be any one of
8 the corporations, or they may merge with or into a ~~business~~
9 surviving entity, which may be any one of the ~~business~~ entities, or
10 they may consolidate into a new resulting corporation or ~~business~~
11 entity formed by the consolidation, which shall be a domestic
12 corporation or ~~business~~ a domestic or foreign entity ~~of this state~~
13 ~~or any other state of the United States, or the District of~~
14 ~~Columbia, which permits the merger or consolidation~~ formed, pursuant
15 to an agreement of merger or consolidation, as the case may be,
16 complying and approved in accordance with this section.—~~In~~
17 ~~addition, any one or more business entities formed under the laws of~~
18 ~~any jurisdiction other than one of the United States may merge or~~
19 ~~consolidate with one or more corporations existing under the laws of~~
20 ~~this state if the surviving or resulting corporation will be a~~
21 ~~corporation of this state and the laws under which the business~~
22 ~~entity or entities are formed permit a business entity of such~~
23 ~~jurisdiction to merge or consolidate with a corporation of another~~
24 ~~jurisdiction.~~ As used in this section, "~~business~~ entity" means a

1 domestic or foreign partnership whether general or limited, and
2 including a limited liability partnership and a limited liability
3 limited partnership, a limited liability company, ~~business trust,~~
4 ~~common law trust, or other unincorporated business~~ and any
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 formed under the laws of this state or the laws of any
10 other jurisdiction. The "articles" of an entity mean the articles
11 of organization, certificate of formation or equivalent document
12 filed with the jurisdiction to form the entity.

13 B. Each corporation and ~~business~~ entity merging or
14 consolidating shall enter into a written agreement of merger or
15 consolidation. The agreement shall state:

- 16 1. The terms and conditions of the merger or consolidation;
- 17 2. The mode of carrying the consolidation into effect;
- 18 3. In the case of a merger in which the surviving entity is a
19 domestic corporation or entity, such amendments or changes in the
20 certificate of incorporation of the surviving corporation or
21 articles of the surviving entity as are desired to be effected by
22 the merger, which amendments or changes may amend and restate the
23 certificate of incorporation of the surviving corporation or
24 articles of the surviving entity in its entirety, or, if no such

1 amendments or changes are desired, a statement that the certificate
2 of incorporation of the surviving corporation or articles of the
3 surviving entity shall be its certificate of incorporation or
4 articles;

5 4. In the case of a consolidation in which the resulting entity
6 is a domestic corporation or entity, that the certificate of
7 incorporation of the resulting corporation or articles of the
8 resulting entity shall be as is set forth in an attachment to the
9 agreement;

10 5. The manner, if any, of converting the shares of stock or
11 memberships or membership interests of each such corporation and the
12 memberships, or membership, economic or ownership interests of each
13 ~~business~~ entity into shares, memberships, or membership, economic or
14 ownership interests, or other securities of the entity surviving or
15 resulting from the merger or consolidation, or of canceling some or
16 all of the shares or interests, and if any shares ~~of any corporation~~
17 ~~or any ownership,~~ memberships or interests ~~of any business entity~~
18 are not to remain outstanding, to be converted solely into shares,
19 ~~ownership~~ memberships, interests, or other securities of the entity
20 surviving or resulting from the merger or consolidation or to be
21 canceled, the cash, property, rights, or securities of any other
22 rights or securities of any other corporation or entity which the
23 holders of such shares, memberships, or ~~ownership~~ interests are to
24 receive in exchange for, or upon conversion of, the shares,

1 memberships or ~~ownership~~ interests and the surrender of any
2 certificates evidencing them, which cash, property, rights, or
3 securities of any other corporation or entity may be in addition to
4 or in lieu of shares, ~~ownership~~ memberships, interests or other
5 securities of the entity surviving or resulting from the merger or
6 consolidation; and

7 4. 6. Other details or provisions as are deemed desirable
8 including, but not limited to, a provision for the payment of cash
9 in lieu of the issuance or recognition of fractional shares, rights,
10 other securities or interests of the surviving or resulting
11 corporation or ~~business~~ entity or of any other corporation or entity
12 the shares, rights, other securities or interests of which are to be
13 received in the merger or consolidation, or for some other
14 arrangement with respect thereto, consistent with Section 1036 of
15 this title; and

16 7. Such other provisions or facts as required to be set forth
17 in an agreement of merger or consolidation by the laws of each
18 jurisdiction under which any of the entities is formed.

19 Any of the terms of the agreement of merger or consolidation may
20 be made dependent upon facts ascertainable outside of the agreement;
21 provided, that the manner in which such facts shall operate upon the
22 terms of the agreement is clearly and expressly set forth in the
23 agreement of merger or consolidation. The term "facts" as used in
24 this paragraph, includes, but is not limited to, the occurrence of

1 any event, including a determination or action by any person or
2 body, including the corporation.

3 C. The agreement required by subsection B of this section shall
4 be adopted, approved, certified, executed, and acknowledged by each
5 of the corporations in the same manner as is provided in Section
6 1081 of this title and, in the case of the ~~business~~ entities, in
7 accordance with their constituent agreements and in accordance with
8 the laws of the jurisdiction under which they are formed, as the
9 case may be; provided that no holder of securities, membership or an
10 interest in a constituent entity who has not voted for or consented
11 to the merger or consolidation shall be required to accept ~~an~~ a
12 membership or interest in the surviving or resulting ~~business~~ entity
13 if acceptance would expose the holder to personal liability for the
14 debts of the surviving ~~business~~ entity. The agreement shall be
15 filed and recorded and shall become effective for all purposes of
16 the laws of this state when and as provided in Section 1081 or 1084
17 of this title with respect to the merger or consolidation of
18 domestic corporations of this state. In lieu of filing and
19 recording the agreement of merger or consolidation, the surviving or
20 resulting corporation or ~~business~~ entity may file a certificate of
21 merger or consolidation, executed in accordance with Section 1007 of
22 this title if the surviving or resulting entity is a corporation, or
23 by a person authorized to act for the ~~business~~ entity, if the
24 surviving or resulting entity is ~~a business~~ an entity, which states:

1 1. The name ~~and~~, jurisdiction of formation or organization, and
2 type of entity of each of the constituent entities;

3 2. That an agreement of merger or consolidation has been
4 approved, adopted, certified, executed, and acknowledged by each of
5 the constituent entities in accordance with this subsection;

6 3. The name of the surviving or resulting corporation or
7 ~~business~~ entity;

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

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

21 6. In the case of a consolidation in which ~~a business~~ an entity
22 other than a corporation is the resulting entity, that the ~~charter~~
23 articles of the resulting entity shall be as set forth in an
24 attachment to the certificate;

1 7. 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 or ~~business~~ entity and the address thereof;

4 8. That a copy of the agreement of consolidation or merger
5 shall be furnished by the surviving or resulting entity, on request
6 and without cost, to any shareholder of any constituent corporation
7 or any ~~partner~~ member of any constituent ~~business~~ entity; and

8 9. The agreement, if any, required by subsection D of this
9 section.

10 D. If the entity surviving or resulting from the merger or
11 consolidation is ~~to be governed by the laws of the District of~~
12 ~~Columbia or any state other than this state~~ a foreign entity, the
13 entity shall agree that it may be served with process in this state
14 in any proceeding for enforcement of any obligation of any
15 constituent domestic corporation or ~~business~~ domestic entity ~~of this~~
16 ~~state~~, as well as for enforcement of any obligation of the surviving
17 or resulting corporation or ~~business~~ entity arising from the merger
18 or consolidation, including any suit or other proceeding to enforce
19 the right of any shareholders as determined in appraisal proceedings
20 pursuant to the provisions of Section 1091 of this title, and shall
21 irrevocably appoint the Secretary of State as its agent to accept
22 service of process in any such suit or other proceedings and shall
23 specify the address to which a copy of any process shall be mailed
24 by the Secretary of State. In the event of service upon the

1 Secretary of State pursuant to ~~this subsection~~ Section 2004 of Title
2 12 of the Oklahoma Statutes, the Secretary of State shall forthwith
3 notify the surviving or resulting corporation or ~~business~~ entity by
4 a letter, sent by certified mail with return receipt requested,
5 directed to the surviving or resulting corporation or ~~business~~
6 entity at its specified address, unless the surviving or resulting
7 corporation or ~~business~~ entity shall have designated in writing to
8 the Secretary of State a different address for that purpose, in
9 which case it shall be mailed to the last address designated. Such
10 letter shall enclose a copy of the process and any other papers
11 served on the Secretary of State pursuant to this subsection. It
12 shall be the duty of the plaintiff in the event of any service to
13 serve process and any other papers in duplicate, to notify the
14 Secretary of State that service is being effected pursuant to this
15 subsection and to pay the Secretary of State the fee provided for in
16 paragraph 7 of subsection A of Section 1142 of this title, which fee
17 shall be taxed as part of the costs in the proceeding, if the
18 plaintiff shall prevail therein. The Secretary of State shall
19 maintain an alphabetical record of any such service, setting forth
20 the name of the plaintiff and the defendant, the title, docket
21 number, and nature of the proceeding in which process has been
22 served upon the Secretary of State, the fact that service has been
23 served upon the Secretary of State, the fact that service has been
24 effected pursuant to this subsection, the return date thereof, and

1 the date service was made. The Secretary of State shall not be
2 required to retain this information longer than five (5) years from
3 the date of receipt of the service of process by the Secretary of
4 State.

5 E. Subsections C, D, ~~E~~ and F and G of Section 1081 of this
6 title, subsections C, D, E and F of Section 1084 of this title, and
7 Sections 1088 through 1090 and 1127 of this title, insofar as they
8 are applicable, shall apply to mergers or consolidations between
9 corporations and ~~business~~ entities; provided, however, that for
10 purposes of a nonstock corporation or entity, references to the
11 board of directors shall be deemed to be references to the governing
12 body of the corporation or entity, references to shareholders shall
13 be deemed to be references to the members or owners of the
14 corporation or entity, and references to shares shall be deemed to
15 be references to memberships or membership, economic or ownership
16 interests in the corporation or entity, as applicable.

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

22 SECTION 23. AMENDATORY 18 O.S. 2011, Section 1090.4, is
23 amended to read as follows:

24 Section 1090.4.

CONVERSION OF A DOMESTIC BUSINESS AN ENTITY TO A DOMESTIC
CORPORATION

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

B. Any ~~business~~ entity may convert to a domestic corporation incorporated under the laws of this state by complying with subsection G of this section and filing in the office of the Secretary of State a certificate of conversion that has been executed in accordance with subsection H of this section and filed in accordance with Section 1007 of this title, to which shall be attached, a certificate of incorporation that has been prepared, executed and acknowledged in accordance with Section 1007 of this title. Each of the certificates required by this subsection shall be filed simultaneously in the office of the Secretary of State.

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

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

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

6 3. The name of the corporation as set forth in its certificate
7 of incorporation filed in accordance with subsection B of this
8 section; and

9 4. The future effective date or time, which shall be a date or
10 time certain not later than ninety (90) days after the filing, of
11 the conversion to a corporation if the conversion is not to be
12 effective upon the filing of the certificate of conversion and the
13 certificate of incorporation provides for the same future effective
14 date as authorized in subsection D of Section 1007 of this title.

15 D. Upon the effective date or time of the certificate of
16 conversion and the certificate of incorporation, the ~~business~~ entity
17 shall be converted to a domestic corporation and the corporation
18 shall thereafter be subject to all of the provisions of this title,
19 except that notwithstanding Section 1007 of this title, the
20 existence of the corporation shall be deemed to have commenced on
21 the date the ~~business~~ entity commenced its existence.

22 E. The conversion of any ~~business~~ entity to a domestic
23 corporation shall not be deemed to affect any obligations or
24 liabilities of the ~~business~~ entity incurred before its conversion to

1 a domestic corporation or the personal liability of any person
2 incurred before such conversion.

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

1 domestic corporation to which the ~~business~~ entity has converted for
2 any purpose of the laws of this state.

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

11 H. Before filing a certificate of conversion with the Secretary
12 of State, the conversion shall be approved in the manner provided
13 for by the document, instrument, agreement or other writing, as the
14 case may be, governing the internal affairs of the ~~business~~ entity
15 and the conduct of its business or by applicable law, as
16 appropriate, and a certificate of incorporation shall be approved by
17 the same authorization required to approve the conversion.

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

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

11 SECTION 24. AMENDATORY 18 O.S. 2011, Section 1090.5, is
12 amended to read as follows:

13 Section 1090.5.

14 CONVERSION OF DOMESTIC CORPORATION TO ~~A BUSINESS~~ AN ENTITY

15 A. A domestic corporation may, upon the authorization of such
16 conversion in accordance with this section, convert to ~~a business~~ an
17 entity. As used in this section, the term "~~business~~ entity" means a
18 domestic or foreign partnership, whether general or limited, and
19 including a limited liability partnership and a limited liability
20 limited partnership, a limited liability company, ~~business trust,~~
21 ~~common law trust, or other unincorporated association~~ and any
22 unincorporated nonprofit or for-profit association, trust or
23 enterprise having members or having outstanding shares of stock or
24 other evidences of financial, beneficial or membership interest

1 therein, whether formed by agreement or under statutory authority or
2 otherwise and whether formed or organized under the laws of this
3 state or the laws of any other jurisdiction.

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

19 C. If the governing act of the domestic ~~business~~ entity to
20 which the corporation is converting does not provide for the filing
21 of a conversion notice with the Secretary of State or the
22 corporation is converting to a foreign ~~business~~ entity, the
23 corporation shall file with the Secretary of State a certificate of
24

1 conversion executed in accordance with Section 1007 of this title
2 which certifies:

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

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

7 3. The name of the ~~business~~ entity to which the corporation
8 shall be converted ~~and,~~ its jurisdiction of formation, ~~if a foreign~~
9 ~~business~~ entity, and the type of entity;

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

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

16 6. The agreement of the foreign ~~business~~ entity that it may be
17 served with process in this state in any action, suit or proceeding
18 for enforcement of any obligation of the foreign ~~business~~ entity
19 arising while it was a domestic corporation and that it irrevocably
20 appoints the Secretary of State as its agent to accept service of
21 process in any such action, suit or proceeding, ~~and its address to~~
22 ~~which a copy of the process shall be mailed to it by the Secretary~~
23 ~~of State; and;~~
24

1 7. The address to which a copy of the process referred to in
2 this subsection shall be mailed by the Secretary of State. In the
3 event of such service upon the Secretary of State in accordance with
4 the provisions of Section 2004 of Title 12 of the Oklahoma Statutes,
5 the Secretary of State shall immediately notify such corporation
6 that has converted out of the State of Oklahoma by letter, certified
7 mail, return receipt requested, directed to the corporation at the
8 address specified unless the corporation shall have designated in
9 writing to the Secretary of State a different address for this
10 purpose, in which case it shall be mailed to the last address so
11 designated. The notice shall include a copy of the process and any
12 other papers served on the Secretary of State pursuant to the
13 provisions of this subsection. It shall be the duty of the
14 plaintiff in the event of such service to serve process and any
15 other papers in duplicate, to notify the Secretary of State that
16 service is being effected pursuant to the provisions of this
17 subsection, and to pay the Secretary of State the fee provided for
18 in paragraph 7 of Section 1142 of this title, which fee shall be
19 taxed as part of the costs in the proceeding. The Secretary of
20 State shall maintain an alphabetical record of any such service
21 setting forth the name of the plaintiff and the defendant, the
22 title, docket number, and nature of the proceeding in which process
23 has been served upon the Secretary of State, the fact that service
24 has been effected pursuant to the provisions of this subsection, the

1 return date thereof, and the date service was made. The Secretary
2 of State shall not be required to retain such information longer
3 than five (5) years from receipt of the service of process by the
4 Secretary of State; and

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

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

21 E. The conversion of a corporation under this section and the
22 resulting cessation of its existence as a domestic corporation shall
23 not be deemed to affect any obligations or liabilities of the
24 corporation incurred before such conversion or the personal

1 liability of any person incurred before the conversion, nor shall it
2 be deemed to affect the choice of law applicable to the corporation
3 with respect to matters arising before the conversion.

4 F. Unless otherwise provided in a resolution of conversion
5 adopted in accordance with this section, the converting corporation
6 shall not be required to wind up its affairs or pay its liabilities
7 and distribute its assets, and the conversion shall not constitute a
8 dissolution of such corporation.

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

18 H. When a corporation has converted to ~~a business~~ an entity
19 under this section, the ~~business~~ entity shall be deemed to be the
20 same entity as the corporation. All of the rights, privileges and
21 powers of the corporation that has converted, and all property,
22 real, personal and mixed, and all debts due to the corporation, as
23 well as all other things and causes of action belonging to the
24 corporation, shall remain vested in the ~~business~~ entity to which the

1 corporation has converted and shall be the property of the ~~business~~
2 entity, and the title to any real property vested by deed or
3 otherwise in the corporation shall not revert or be in any way
4 impaired by reason of the conversion; but all rights of creditors
5 and all liens upon any property of the corporation shall be
6 preserved unimpaired, and all debts, liabilities and duties of the
7 corporation that has converted shall remain attached to the ~~business~~
8 entity to which the corporation has converted, and may be enforced
9 against it to the same extent as if said debts, liabilities and
10 duties had originally been incurred or contracted by it in its
11 capacity as the ~~business~~ entity. The rights, privileges, powers and
12 interest in property of the corporation that has converted, as well
13 as the debts, liabilities and duties of the corporation, shall not
14 be deemed, as a consequence of the conversion, to have been
15 transferred to the ~~business~~ entity to which the corporation has
16 converted for any purpose of the laws of this state.

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

21 J. Nothing in this section shall be deemed to authorize the
22 conversion of a charitable nonstock corporation into another entity,
23 if the charitable status of such charitable nonstock corporation
24 would thereby be lost or impaired.

1 SECTION 25. AMENDATORY 18 O.S. 2011, Section 1092, is
2 amended to read as follows:

3 Section 1092.

4 SALE, LEASE OR EXCHANGE OF ASSETS; CONSIDERATION; PROCEDURE

5 A. Every corporation, at any meeting of its board of directors
6 or governing body, may sell, lease, or exchange all or substantially
7 all of its property and assets, including its goodwill and its
8 corporate franchises, upon such terms and conditions and for such
9 consideration, which may consist in whole or in part of money or
10 other property, including shares of stock in, and/or other
11 securities of, any other corporation or corporations, as its board
12 of directors or governing body deems expedient and for the best
13 interests of the corporation, when and as authorized by a resolution
14 adopted by the holders of a majority of the outstanding stock of the
15 corporation entitled to vote thereon or, if the corporation is a
16 nonstock corporation, by a majority of the members having the right
17 to vote for the election of the members of the governing body and
18 any other members entitled to vote thereon under the certificate of
19 incorporation or the bylaws of such corporation, at a meeting duly
20 called upon at least twenty (20) days' notice. The notice of the
21 meeting shall state that such a resolution will be considered.

22 B. Notwithstanding authorization or consent to a proposed sale,
23 lease or exchange of a corporation's property and assets by the
24 shareholders or members, the board of directors or governing body

1 may abandon such proposed sale, lease or exchange without further
2 action by the shareholders or members, subject to the rights, if
3 any, of third parties under any contract relating thereto.

4 C. For purposes of this section only, the property and assets
5 of the corporation include the property and assets of any subsidiary
6 of the corporation. As used in this subsection, "subsidiary" means
7 any entity wholly owned and controlled, directly or indirectly, by
8 the corporation and includes, without limitation, corporations,
9 partnerships, limited partnerships, limited liability partnerships,
10 limited liability companies, and statutory trusts. Notwithstanding
11 subsection A of this section, except to the extent the certificate
12 of incorporation otherwise provides, no resolution by shareholders
13 or members shall be required for a sale, lease or exchange of
14 property and assets of the corporation to a subsidiary.

15 SECTION 26. AMENDATORY 18 O.S. 2011, Section 1097, is
16 amended to read as follows:

17 Section 1097.

18 DISSOLUTION OF NONSTOCK CORPORATION; PROCEDURE

19 A. Whenever it shall be desired to dissolve any nonstock
20 corporation ~~having no capital stock~~, the governing body shall
21 perform all the acts necessary for dissolution which are required by
22 the provisions of Section 1096 of this title to be performed by the
23 board of directors of a corporation having capital stock. If the
24 members of a corporation having no capital stock are entitled to

1 vote for the election of members of its governing body or are
2 entitled to vote for dissolution under the certificate of
3 incorporation or the bylaws of such corporation, they shall perform
4 all the acts necessary for dissolution which are required by the
5 provisions of Section 1096 of this title to be performed by the
6 shareholders of a corporation having capital stock, including
7 dissolution without action of the members of the governing body if
8 all the members of the corporation entitled to vote thereon shall
9 consent in writing and a certificate of dissolution shall be filed
10 with the Secretary of State pursuant to subsection D of Section 1096
11 of this title. If there is no member entitled to vote thereon, the
12 dissolution of the corporation shall be authorized at a meeting of
13 the governing body, upon the adoption of a resolution to dissolve by
14 the vote of a majority of members of its governing body then in
15 office. ~~In the event of the dissolution of a not for profit~~
16 ~~corporation, a notice of dissolution shall be published one (1) time~~
17 ~~in a newspaper having general circulation in the county in which the~~
18 ~~principal place of business of such corporation is located. In all~~
19 other respects, the method and proceedings for the dissolution of a
20 nonstock corporation ~~having no capital stock~~ shall conform as nearly
21 as may be to the proceedings prescribed by the provisions of Section
22 1096 of this title for the dissolution of corporations having
23 capital stock.

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

9 SECTION 27. AMENDATORY 18 O.S. 2011, Section 1100.1, is
10 amended to read as follows:

11 Section 1100.1.

12 NOTICE TO CLAIMANTS; FILING OF CLAIMS

13 A. 1. After a corporation has been dissolved in accordance
14 with the procedures set forth in the Oklahoma General Corporation
15 Act, the corporation or any successor entity may give notice of the
16 dissolution requiring all persons having a claim against the
17 corporation other than a claim against the corporation in a pending
18 action, suit, or proceeding to which the corporation is a party to
19 present their claims against the corporation in accordance with the
20 notice. The notice shall state:

- 21 a. that all such claims must be presented in writing and
22 must contain sufficient information reasonably to
23 inform the corporation or successor entity of the
24

- 1 identity of the claimant and the substance of the
2 claim,
- 3 b. the mailing address to which a claim must be sent,
4 c. the date by which a claim must be received by the
5 corporation or successor entity, which date shall be
6 no earlier than sixty (60) days from the date of the
7 notice,
- 8 d. that the claim will be barred if not received by the
9 date referred to in subparagraph c of this paragraph,
- 10 e. that the corporation or a successor entity may make
11 distributions to other claimants and the corporation's
12 shareholders or persons interested as having been such
13 without further notice to the claimant, and
- 14 f. the aggregate amount, on an annual basis, of all
15 distributions made by the corporation to its
16 shareholders for each of the three (3) years prior to
17 the date the corporation dissolved.

18 2. The notice shall also be published at least once a week for
19 two (2) consecutive weeks in a newspaper of general circulation in
20 the county in which the office of the corporation's last registered
21 agent in this state is located and in the corporation's principal
22 place of business and, in the case of a corporation having Ten
23 Million Dollars (\$10,000,000.00) or more in total assets at the time
24 of its dissolution, at least once in an Oklahoma newspaper having a

1 circulation of at least two hundred fifty thousand (250,000). On or
2 before the date of the first publication of the notice, the
3 corporation or successor entity shall mail a copy of the notice by
4 certified or registered mail, return receipt requested, to each
5 known claimant of the corporation, including persons with claims
6 asserted against the corporation in a pending action, suit, or
7 proceeding to which the corporation is a party.

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

13 4. A corporation or successor entity may reject, in whole or in
14 part, any claim made by a claimant pursuant to this subsection by
15 mailing notice of rejection by certified or registered mail return
16 receipt requested to the claimant within ninety (90) days after
17 receipt of the claim and, in all events, at least one hundred fifty
18 (150) days before the expiration of the period described in Section
19 1099 of ~~Title 18 of the Oklahoma Statutes~~ this title; provided,
20 however, that in the case of a claim filed pursuant to Section 1110
21 of this title against a corporation or successor entity for which a
22 receiver or trustee has been appointed by the district court, the
23 time period shall be as provided in Section 1111 of this title, and
24 the thirty-day appeal period provided for in Section 1111 of this

1 title shall be applicable. A notice sent by a corporation or
2 successor entity pursuant to this subsection shall state that any
3 claim rejected will be barred if an action, suit, or proceeding with
4 respect to the claim is not commenced within one hundred twenty
5 (120) days of the date thereof, and shall be accompanied by a copy
6 of Sections 1099 through 1100.3 of this title, and, in the case of a
7 notice sent by a court-appointed receiver or trustee for a claim
8 filed pursuant to Section 1110 of this title, the notice shall be
9 accompanied by copies of Sections 1110 and 1111 of this title.

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

15 B. 1. A corporation or successor entity electing to follow the
16 procedures described in subsection A of this section shall also give
17 notice of the dissolution of the corporation to persons with
18 contractual claims contingent upon the occurrence or nonoccurrence
19 of future events or otherwise conditional or unmatured, and request
20 that those persons present their claims in accordance with the terms
21 of the notice. As used in this section and Section 1100.2 of this
22 title, the term "contractual claims" shall not include any implied
23 warranty as to any product manufactured, sold, distributed, or
24 handled by the dissolved corporation. The notice shall be in

1 substantially the form, and sent and published in the same manner,
2 as described in paragraph 1 of subsection A of this section.

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

18 C. 1. A corporation or successor entity which has given notice
19 in accordance with subsection A of this section shall petition the
20 district court to determine the amount and form of security that
21 will be reasonable likely to be sufficient to provide compensation
22 for any claim against the corporation which is the subject of a
23 pending action, suit, or proceeding to which the corporation is a
24

1 party other than a claim barred pursuant to subsection A of this
2 section.

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

9 3. A corporation or successor entity which has given notice in
10 accordance with subsection A of this section shall petition the
11 district court to determine the amount and form of security which
12 will be reasonably likely to be sufficient to provide compensation
13 for claims that have not been made known to the corporation or that
14 have not arisen but that, based on facts known to the corporation or
15 successor entity, are likely to arise or to become known to the
16 corporation or successor entity within five (5) years after the date
17 of dissolution or a longer period of time as the district court may
18 determine not to exceed ten (10) years after the date of
19 dissolution. The district court may appoint a guardian ad litem in
20 respect of any such proceeding brought under this subsection. The
21 reasonable fees and expenses of the guardian, including all
22 reasonable expert witness fees, shall be paid by the petitioner in
23 the proceeding.

24

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

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

20 F. In the case of a nonstock corporation, any notice referred
21 to in the last sentence of paragraph 4 of subsection A of this
22 section shall include a copy of Section 1 of this act. In the case
23 of a nonprofit nonstock corporation, provisions of this section
24 regarding distributions to members shall not apply to the extent

1 that those provisions conflict with any other applicable law or with
2 that corporation's certificate of incorporation or bylaws.

3 SECTION 28. AMENDATORY 18 O.S. 2011, Section 1100.2, is
4 amended to read as follows:

5 Section 1100.2.

6 PAYMENT AND DISTRIBUTION TO CLAIMANTS AND SHAREHOLDERS

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

- 10 a. pay the claims made and not rejected in accordance
11 with subsection A of Section 1100.1 of this title~~+~~L
12 b. post the security offered and not rejected pursuant to
13 paragraph 2 of subsection B of Section 1100.1 of this
14 title~~+~~L
15 c. post any security ordered by the district court in any
16 proceeding under subsection C of Section 1100.1 of
17 this title~~+~~L and
18 d. pay or make provision for all other claims that are
19 mature, known, and uncontested or that have been
20 finally determined to be owing by the corporation or
21 successor entity.

22 2. Claims or obligations shall be paid in full and any
23 provision for payment shall be made in full if there are sufficient
24 assets. If there are insufficient assets, the claims and

1 obligations shall be paid or provided for according to their
2 priority, and, among claims of equal priority, ratably to the extent
3 of assets legally available therefor. Any remaining assets shall be
4 distributed to the shareholders of the dissolved corporation;
5 provided, however, that distribution shall not be made before the
6 expiration of one hundred fifty (150) days from the date of the last
7 notice of rejections given pursuant to paragraph 3 of subsection A
8 of Section 1100.1 of this title. In the absence of actual fraud,
9 the judgment of the directors of the dissolved corporation or the
10 governing persons of the successor entity as to the provision made
11 for the payment of all obligations under subparagraph d of paragraph
12 4 1 of this subsection shall be conclusive.

13 B. A dissolved corporation or successor entity which has not
14 followed the procedures described in Section 1100.1 of this title
15 shall, prior to the expiration of the period described in Section
16 1099 of this title, adopt a plan of distribution pursuant to which
17 the dissolved corporation or successor entity:

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

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

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

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

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

21 E. As used in this section, the term "priority" does not refer
22 either to the order of payments set forth in ~~paragraphs 1 through 4~~
23 subparagraphs a through d of paragraph 1 of subsection A of this
24

1 section or to the relative times at which any claims mature or are
2 reduced to judgment.

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

8 SECTION 29. This act shall become effective November 1, 2019.

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10 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 03/27/2019 - DO
11 PASS.

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