

CHAPTER 143  
SENATE BILL No. 29

AN ACT concerning business entities; amending K.S.A. 17-6102, 17-6201, 17-6202, 17-6301, 17-6302, 17-6305, 17-6402, 17-6407, 17-6408, 17-6410, 17-6412, 17-6417, 17-6418, 17-6420, 17-6422, 17-6423, 17-6424, 17-6425, 17-6426, 17-6501, 17-6503, 17-6504, 17-6505, 17-6506, 17-6507, 17-6508, 17-6509, 17-6510, 17-6511, 17-6512, 17-6513, 17-6514, 17-6515, 17-6517, 17-6518, 17-6519, 17-6520, 17-6604, 17-6801, 17-6805a, 17-6808, 17-6810, 17-6811, 17-6902, 17-6903, 17-6904, 17-6905, 17-6906, 17-6907, 17-6908, 17-6909, 17-6910, 17-6911, 17-7003, 17-7103, 17-7104, 17-7202, 17-7303, 17-7304, 17-7510, 17-7512, 17-7514, 56-1a156 and 56-1a502 and K.S.A. 2003 Supp. 17-2036, 17-2707, 17-2710, 17-6002, 17-6003, 17-6205, 17-6206, 17-6401, 17-6502, 17-6605, 17-6701, 17-6702, 17-6703, 17-6704, 17-6705, 17-6706, 17-6707, 17-6712, 17-6804, 17-7001, 17-7301, 17-7302, 17-7306, 17-7503, 17-7504, 17-7505, 17-7506, 17-7507, 17-7508, 17-7678, 17-76,121, 17-76,139, 56-1a606 and 56-1a607 and repealing the existing sections; also repealing K.S.A. 17-7513 and K.S.A. 2003 Supp. 17-7502.

*Be it enacted by the Legislature of the State of Kansas:*

Section 1. K.S.A. 2003 Supp. 17-6002 is hereby amended to read as follows: 17-6002. (a) The articles of incorporation shall set forth:

(1) The name of the corporation which, except for banks, shall contain one of the words "association," "church," "college," "company," "corporation," "club," "foundation," "fund," "incorporated," "institute," "society," "union," "syndicate" or "limited," or one of the abbreviations "co.," "corp.," "inc.," "ltd.," or words or abbreviations of like import in other languages if they are written in Roman characters or letters, and which shall be such as to distinguish it upon the records in the office of the secretary of state from the names of other corporations, limited liability companies and limited partnerships organized, reserved or registered under the laws of this state, unless there shall be obtained the written consent of such other corporation, limited liability company or limited partnership executed and filed in accordance with K.S.A. 17-6003, and amendments thereto. The name of every corporation heretofore organized, except for banks, may be changed to conform to the provisions of this section, but such change of name for existing corporations shall not be required, and nothing herein shall be construed as requiring any corporation which is subject to special statutory regulation to include any of such names or abbreviations in the name of such corporation if such name or abbreviation would be inconsistent or in conflict with such special statutory regulation;

(2) the address, which shall include the street, number, city and zip code of the corporation's registered office in this state, and the name of its resident 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 Kansas general corporation code, 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 articles of incorporation shall set forth the total number of shares of all classes of stock which the corporation shall have authority to issue and the number of shares of each class, and shall specify each class the shares of which are to be without par value, and each class the shares of which are to have a par value and the par value of the shares of each such class. The articles of incorporation shall also set forth a statement of the designations and the powers, preferences and rights, and the qualifications, limitations or restrictions thereof, which are permitted by K.S.A. 17-6401, and amendments thereto, in respect to any class or classes of stock or any series of any class of stock of the corporation and the fixing of which by the articles of incorporation is desired, and an express grant of such authority as it may then be desired to grant to the board of directors to fix by resolution or resolutions any thereof that may be desired but which shall not be fixed by the articles of incorporation. The provisions of this subsection shall not apply to corporations which are not organized for profit and

which are not to have authority to issue capital stock. In the case of such corporations, the fact that they are not to have authority to issue capital stock shall be stated in the articles of incorporation *and unless otherwise provided in the articles of incorporation or bylaws, the directors of such corporation shall be members for all purposes under the Kansas general corporation code.* The conditions of membership of such corporations shall likewise be stated in the articles of incorporation or the articles may provide that the conditions of membership shall be stated in the bylaws, and if a corporation not organized for profit is to have authority to issue capital stock, such fact shall be stated in the articles of incorporation;

(5) the name and mailing address of the incorporator or incorporators; and

(6) if the powers of the incorporator or incorporators are to terminate upon the filing of the articles of incorporation, the names and mailing addresses of the persons who are to serve as directors until the first annual meeting of stockholders or until their successors are elected and qualify.

(b) In addition to the matters required to be set forth in the articles of incorporation by subsection (a), the articles of incorporation may also contain any or all of the following matters:

(1) Any provision for the management of the business and for the conduct of the affairs of the corporation, and any provision creating, defining, limiting and regulating the sale or other disposition of stock and the powers of the corporation, the directors and the stockholders, or any class of the stockholders, or the members of a nonstock corporation, if such provisions are not contrary to the laws of this state. Any provision which is required or permitted by any section of this act to be stated in the bylaws may be stated instead in the articles of incorporation;

(2) the following provisions, in these words: "Whenever a compromise or arrangement is proposed between this corporation and its creditors or any class of them or between this corporation and its stockholders or any class of them, any court of competent jurisdiction within the state of Kansas, on the application in a summary way of this corporation or of any creditor or stockholder thereof or on the application of any receiver or receivers appointed for this corporation under the provisions of K.S.A. 17-6808 and 17-6901, and amendments thereto, ~~or on the application of trustees in dissolution or of any receiver or receivers appointed for this corporation under the provisions of K.S.A. 17-6808, and amendments thereto,~~ may order a meeting of the creditors or class of creditors, or of the stockholders or class of stockholders of this corporation, as the case may be, to be summoned in such manner as the court directs. If a majority in number representing  $\frac{3}{4}$  in value of the creditors or class of creditors, or of the stockholders or class of stockholders of this corporation, as the case may be, agree to any compromise or arrangement and to any reorganization of this corporation as consequence of such compromise or arrangement and the reorganization, if sanctioned by the court to which the application has been made, shall be binding on all the creditors or class of creditors, or on all the stockholders or class of stockholders, of this corporation, as the case may be, and also on this corporation";

(3) such provisions as may be desired granting to the holders of the stock of the corporation, or the holders of any class or series of a class thereof, the preemptive right to subscribe to any or all additional issues of stock of the corporation of any or all classes or series thereof, or to any securities of the corporation convertible into such stock. No stockholder shall have any preemptive right to subscribe to an additional issue of stock or to any security convertible into such stock unless, and except to the extent that, such right is expressly granted to such stockholder in the articles of incorporation. All such rights in existence on July 1, 1972, shall remain in existence unaffected by this paragraph (3) unless and until changed or terminated by appropriate action which expressly provides for such change or termination;

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

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

(6) a provision imposing personal liability for the debts of the corporation on its stockholders or members to a specified extent and upon specified conditions; otherwise, the stockholders or members of a cor-

poration shall not be personally liable for the payment of the corporation's debts except as they may be liable by reason of their own conduct or acts;

(7) the manner of adoption, alteration and repeal of bylaws; and

(8) a provision eliminating or limiting the personal liability of a director to the corporation or its stockholders, policyholders or members for monetary damages for breach of fiduciary duty as a director, provided that such provision shall not eliminate or limit the liability of a director (A) for any breach of the director's duty of loyalty to the corporation or its stockholders, policyholders or members, (B) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (C) under the provisions of K.S.A. 17-6424, and amendments thereto, or (D) for any transaction from which the director derived an improper personal benefit. No such provision shall eliminate or limit the liability of a director for any act or omission occurring prior to the date when such provision becomes effective. All references in this subsection to a director shall be deemed also to refer to a member of the governing body of a corporation which is not authorized to issue capital stock.

(c) It shall not be necessary to set forth in the articles of incorporation any of the powers conferred on corporations by this act.

Sec. 2. K.S.A. 2003 Supp. 17-6003 is hereby amended to read as follows: 17-6003. (a) ~~Whenever~~ *When* any provision of this act requires any instrument to be filed with the secretary of state or in accordance with this section, such instrument shall be executed as follows:

(1) The articles of incorporation shall be signed by the incorporator or incorporators, and any other instrument to be filed before the election of the initial board of directors, if the initial directors were not named in the articles of incorporation, shall be signed by the incorporator or incorporators; ~~and~~ *If any incorporator is not available by reason of death, incapacity, refusal or neglect to act, then the instrument may be signed by any person for whom or on whose behalf such incorporator was acting as employee or agent. The instrument shall state that the incorporator is not available and the reason therefor; that such incorporator was acting as employee or agent for or on behalf of such person; and that such person's signature is authorized.*

(2) All other instruments shall be signed: (i) ~~By the chairperson or vice chairperson of the board of directors, or by the president or a vice president, and attested by the secretary or an assistant secretary, or by such officers as may be duly authorized to exercise the duties, respectively, ordinarily exercised by the president or vice president and by the secretary or assistant secretary of a~~ *any authorized officer of the corporation;* (ii) if it appears from the instrument that there are no such officers, by a majority of the directors or by such directors as may be designated by the board; (iii) if it appears from the instrument that there are no such officers or directors, by the holders of record, or such of them as may be designated by the holders of record, of a majority of all outstanding shares of stock; or (iv) by the holders of record of all outstanding shares of stock.

(b) The execution of any document *required to be filed with the secretary of state* pursuant to chapter 17 of the Kansas Statutes Annotated shall constitute an oath or affirmation, under the penalties of perjury, that the facts stated in the document are true.

(c) ~~Whenever~~ *When* any provision of this act requires any instrument to be filed with the secretary of state or in accordance with this section, such requirement means that:

(1) The original signed instrument, ~~together with a duplicate copy which may be either a signed or conformed copy,~~ shall be delivered to the office of the secretary of state. Any signature on documents authorized to be filed with the secretary of state under the provisions of this ~~chapter~~ *act* may be a facsimile, a conformed signature or an electronically transmitted signature;

(2) all taxes and fees authorized by law to be collected by the secretary of state in connection with the filing of the instrument shall be tendered to the secretary of state;

(3) upon delivery of the instrument, and upon tender of the required taxes and fees, the secretary of state shall certify that the instrument has been filed in the office of secretary of state by endorsing upon the original signed instrument the word "Filed" and the date and hour of its filing. This endorsement is the "filing date" of the instrument and is conclusive of the date and time of its filing in the absence of actual fraud. The

secretary of state shall thereupon ~~file and index~~ *record* the endorsed instrument *in an electronic medium*; and

(4) ~~the secretary of state shall compare the duplicate copy with the original signed instrument, and if the secretary of state finds that they are identical, the secretary of state shall certify the duplicate copy by making upon it the same endorsement which is required to appear upon the original, together with a further endorsement that the duplicate copy is a true~~ *return the original instrument as a certified copy of the original signed recorded instrument, except this provision shall not apply to annual reports.*

(d) Any instrument filed in accordance with subsection (c) shall be effective upon its filing date. Except where it has been determined otherwise by a court of competent jurisdiction, any instrument filed in accordance with subsections (c)(1) through (c)(4) prior to July 1, 1998, shall be deemed to be effective on the date it was so filed, unless a different effective date was specified for the instrument in accordance with this subsection, and the recording of such instrument with a register of deeds shall not be required in order for the instrument to take effect. Any instrument may provide that it is not to become effective until a specified date subsequent to its filing date, but such date shall not be later than 90 days after its filing date. *If any instrument filed in accordance with subsection (c) provides for a future effective date and the transaction is terminated or its terms are amended to change the future effective date prior to the future effective date, the instrument shall be terminated or amended by the filing, prior to the future effective date, of a certificate of termination or a certificate of amendment of the original instrument, executed and filed in accordance with this section. The certificate shall identify the instrument which has been terminated or amended, and shall state that the instrument has been terminated or the manner in which it has been amended.*

(e) If another section of this act or any other law of this state specifically prescribes a manner of executing or filing a specified instrument or a time when such instrument shall become effective, which differs from the corresponding provisions of this section, then the provisions of such other section shall govern.

(f) ~~Whenever~~ *When* any instrument authorized to be filed with the secretary of state under any provision of this act has been so filed and is an inaccurate record of the corporate action therein referred to, or was defectively or erroneously executed, such instrument may be corrected by filing with the secretary of state a certificate of correction of such instrument which shall be executed and filed in accordance with this section. The certificate of correction shall specify the inaccuracy or defect to be corrected and shall set forth the portion of the instrument in corrected form. ~~The corrected instrument~~ *In lieu of filing a certificate of correction, the instrument may be corrected by filing with the secretary of state a corrected instrument which shall be executed and filed in accordance with this section. The corrected instrument shall be specifically designated as such in its heading, shall specify the inaccuracy or defect to be corrected, and shall set forth the entire instrument in corrected form. An instrument corrected in accordance with this section shall be effective as of the date the original instrument was filed, except as to those persons who are substantially and adversely affected by the correction and as to those persons, the corrected instrument shall be effective from the filing date.*

(g) ~~Whenever~~ *When* any corporation conveys any lands or interests therein by deed or other appropriate instrument of conveyance, such deed or instrument shall be executed on behalf of the corporation by ~~the president, vice-president or presiding member or trustee~~ *any authorized officer* of the corporation. Such deed or instrument, when acknowledged by such officer to be the act of the corporation, or proved in the same manner provided for other conveyances of lands, may be recorded in the same manner and with the same effect as other deeds. Corporations likewise shall have power to convey by an agent or attorney so authorized under ~~letter~~ *power* of attorney or other instrument containing a power to convey real estate or any interest therein, which power of attorney shall be executed by the corporation in the same manner as herein provided for the execution of deeds or other instruments of conveyance.

(h) *If any instrument authorized to be filed with the secretary of state is filed and is inaccurately, defectively or erroneously executed or other-*

*wise defective in any respect, the secretary of state shall not be liable to any person for the preclearance for filing, the acceptance for filing or the filing and indexing such instrument.*

Sec. 3. K.S.A. 17-6102 is hereby amended to read as follows: 17-6102. Every domestic corporation subject to the provisions of this act shall have power to:

(1) Have perpetual succession by its corporate name, unless a limited period of duration is stated in its articles of incorporation;

(2) Sue and be sued in all courts and participate, as a party or otherwise, in any judicial, administrative, arbitratative or other proceeding, in its corporate name;

(3) Have a corporate seal, which may be altered at pleasure, and use the same by causing it, or a facsimile thereof, to be impressed or affixed or in any other manner reproduced;

(4) Purchase, receive, take by grant, gift, devise, bequest or otherwise, lease, or otherwise acquire, own, hold, improve, employ, use and otherwise deal in and with real or personal property, or any interest therein, wherever situated, and to sell, convey, lease, exchange, transfer or otherwise dispose of, or mortgage or pledge, all or any of its property and assets, or any interest therein, wherever situated;

(5) Appoint such officers and agents as the business of the corporation requires and to pay or otherwise provide for them suitable compensation;

(6) Adopt, amend and repeal bylaws;

(7) Wind up and dissolve itself in the manner provided in this act;

(8) Conduct its business, carry on its operations and have offices and exercise its powers within or without this state;

(9) Make donations for the public welfare or for charitable, scientific or educational purposes, and in time of war or other national emergency in aid thereof;

(10) Be an incorporator, promoter or manager of other corporations of any type or kind;

(11) Participate with others in any corporation, partnership, limited partnership, joint venture or other association of any kind, or in any transaction, undertaking or arrangement which the participating corporation would have power to conduct by itself, whether or not such participation involves sharing or delegation of control with or to others;

(12) Transact any lawful business which the corporation's board of directors shall find to be in aid of governmental authority;

(13) Make contracts, including contracts of guaranty and suretyship, incur liabilities, borrow money at such rates of interest as the corporation may determine, issue its notes, bonds and other obligations, and secure any of its obligations by mortgage, pledge or other encumbrance of all or any of its property, franchises and income, and make contracts of guaranty and suretyship which are necessary or convenient to the conduct, promotion or attainment of the business of: (A) A corporation all of the outstanding stock of which is owned, directly or indirectly, by the contracting corporation; (B) a corporation which owns, directly or indirectly, all of the outstanding stock of the contracting corporation; or (C) a corporation all of the outstanding stock of which is owned, directly or indirectly, by a corporation which owns, directly or indirectly, all of the outstanding stock of the contracting corporation, which contracts of guaranty and suretyship shall be deemed to be necessary or convenient to the conduct, promotion or attainment of the business of the contracting corporation, and make other contracts of guaranty and suretyship which are necessary or convenient to the conduct, promotion or attainment of the business of the contracting corporation;

(14) Lend money for its corporate purposes, invest and reinvest its funds and take, hold and deal with real and personal property as security for the payment of funds so loaned or invested;

(15) Pay pension and establish and carry out pension, profit sharing, stock option, stock purchase, stock bonus, retirement, benefit, incentive and compensation plans, trusts and provisions for any or all of its directors, officers, and employees, and for any or all of the directors, officers, and employees of its subsidiaries;

(16) Provide insurance for its benefit on the life of any of its directors, officers or employees, or on the life of any stockholder for the purpose of acquiring at ~~his~~ *such stockholder's* death shares of its stock owned by such stockholder; *and*

(17) *Renounce, in its articles of incorporation or by action of its board of directors, any interest or expectancy of the corporation in, or in being offered an opportunity to participate in, specified business opportunities or specified classes or categories of business opportunities that are presented to the corporation or one or more of its officers, directors or stockholders.*

Sec. 4. K.S.A. 17-6201 is hereby amended to read as follows: 17-6201. (a) Every corporation shall have and maintain in this state a registered office which may, but need not be, the same as its place of business.

(b) Unless the context otherwise requires, whenever the term “corporation’s principal office or place of business in this state” or “principal office or place of business of the corporation in this state,” or other term of like import, is or has been used in a corporation’s articles of incorporation, or in any other document, or in any statute *other than the Kansas uniform commercial code*, it shall be deemed to mean and refer to the corporation’s registered office required by this section; and it shall not be necessary for any corporation to amend its articles of incorporation or any other document to comply with this section.

Sec. 5. K.S.A. 17-6202 is hereby amended to read as follows: 17-6202. (a) Every corporation shall have and maintain in this state a resident agent, which agent may be either: (1) *The corporation itself*; (2) an individual resident in this state ~~whose business office is identical with the corporation’s registered office or~~; (3) a domestic corporation, ~~which may be itself, having a business office identical with such registered office~~ *a domestic limited partnership, a domestic limited liability company or a domestic business trust; or (4) a foreign corporation, a foreign limited partnership or a foreign limited liability company authorized to transact business in this state. The resident agent shall have a business office identical with the registered office which is generally open during normal business hours to accept service of process and otherwise perform the functions of a resident agent.*

(b) Unless the context otherwise requires, whenever the term “resident agent” or “registered agent” or “resident agent in charge of a corporation’s principal office or place of business in this state,” or other term of like import which refers to a corporation’s agent required by statute to be located in this state, is or has been used in a corporation’s articles of incorporation, or in any other document, or in any statute, it shall be deemed to mean and refer to the corporation’s resident agent required by this section; and it shall not be necessary for any corporation to amend its articles of incorporation or any other document to comply with this section.

Sec. 6. K.S.A. 2003 Supp. 17-6205 is hereby amended to read as follows: 17-6205. The resident agent of one or more corporations may resign and appoint a successor resident agent by filing ~~in duplicate~~ a certificate with the secretary of state, stating the name and address of the successor agent, in accordance with subsection (a)(2) of K.S.A. 17-6002 and amendments thereto. There shall be attached to such certificate a statement of each affected corporation ratifying and approving such change of resident agent. Each such statement shall be executed in accordance with K.S.A. 17-6003 and amendments thereto. Upon such filing, the successor resident agent shall become the resident agent of such corporations as have ratified and approved such substitution and the successor resident agent’s address, as stated in such certificate, shall become the address of each such corporation’s registered office in this state. ~~The secretary of state shall then issue the secretary’s certificate that the successor resident agent has become the resident agent of the corporations so ratifying and approving such change, and setting out the names of such corporations. The certificate of the secretary of state shall be filed in accordance with K.S.A. 17-6003 and amendments thereto, and the register of deeds shall forthwith make a note of the change of registered office and resident agent on the margin of the record of the articles of incorporation of those corporations which have ratified and approved such change.~~

Sec. 7. K.S.A. 2003 Supp. 17-6206 is hereby amended to read as follows: 17-6206. (a) The resident agent of one or more corporations may resign without appointing a successor by filing ~~in duplicate~~ a certificate *executed in accordance with K.S.A. 17-6003, and amendments thereto*, with the secretary of state; but such resignation shall not become effective until 60 days after the certificate is filed. There shall be attached to such

certificate an affidavit of such resident agent, if an individual, or of the president, a vice-president, or the secretary thereof *authorized officer*, if a corporation or any other entity designated pursuant to K.S.A. 17-6202, and amendments thereto that at least 30 days prior to the date of the filing of such certificate, due notice was sent by certified or registered mail to the corporation for which such resident agent was acting, by mailing to the secretary of such corporation, as such secretary's name and address appears on the last annual report of such corporation filed with the secretary of state, or if no annual report has been filed, then as otherwise shown by the files and records of the secretary of state.

(b) After receipt of the notice of the resignation of its resident agent, provided for in subsection (a) ~~of this section~~, the corporation for which such resident agent was acting shall obtain and designate a new resident agent to take the place of the resident agent so resigning in the same manner as provided in K.S.A. 17-6203 and amendments thereto for change of resident agent. If such corporation, being a corporation of this state, fails to obtain and designate a new resident agent as aforesaid prior to the expiration of the period of 60 days after the filing by the resident agent of the certificate of resignation, the secretary of state shall declare the corporate existence of such corporation forfeited. If such corporation, being a foreign corporation, fails to obtain and designate a new resident agent as aforesaid prior to the expiration of the period of 60 days after the filing by the resident agent of the certificate of resignation, the secretary of state shall forfeit its authority to do business in this state.

(c) After the resignation of the resident agent shall have become effective, as provided in this section, and if no new resident agent shall have been obtained and designated in the time and manner aforesaid, service of legal process against the corporation for which the resigned resident agent had been acting shall thereafter be upon the secretary of state in the manner prescribed by K.S.A. 60-304 and amendments thereto.

Sec. 8. K.S.A. 17-6301 is hereby amended to read as follows: 17-6301. (a) The business and affairs of every corporation shall be managed by or under the direction of a board of directors, except as may be otherwise provided in this act or in the articles of incorporation. If any such provision is made in the articles of incorporation, the powers and duties conferred or imposed upon the board of directors by this act shall be exercised or performed to such extent and by such person or persons as shall be provided in the articles of incorporation.

(b) The board of directors of a corporation shall consist of one or more members, *each of whom shall be a natural person*. The number of directors shall be fixed by, or in the manner provided in, the bylaws, unless the articles of incorporation establish the number of directors, in which case a change in the number of directors shall be made only by amendment of the articles. Directors need not be stockholders unless so required by the articles of incorporation or the bylaws. The articles of incorporation or bylaws may prescribe other qualifications for directors. Each director shall hold office until a successor is elected and qualified or until such director's earlier resignation or removal. Any director may resign at any time upon ~~written~~ notice *given in writing or by electronic transmission* to the corporation. A majority of the total number of directors shall constitute a quorum for the transaction of business unless the articles of incorporation or the bylaws require a greater number. Unless the articles of incorporation provide otherwise, the bylaws may provide that a number less than a majority shall constitute a quorum which in no case shall be less than  $\frac{1}{3}$  of the total number of directors except that, when a board of one director is authorized under the provisions of this section, one director shall constitute a quorum. 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 articles of incorporation or the bylaws shall require a vote of a greater number.

(c) (1) *All corporations incorporated prior to July 1, 2004, shall be governed by paragraph (2), except that any such corporation may by a resolution adopted by a majority of the whole board elect to be governed by paragraph (3), in which case paragraph (2) shall not apply to such corporation. All corporations incorporated on or after July 1, 2004, shall be governed by paragraph (3).*

(2) The board of directors may designate, by resolution passed by a majority of the whole board, one or more committees, each committee to consist 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 thereof present at any meeting and not disqualified from voting, whether or not such 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 such absent or disqualified member. Any such committee, to the extent provided in the resolution of the board of directors, or in the bylaws of the corporation, shall have and may exercise all the powers and authority of the board of directors in the management of the business and affairs of the corporation and may authorize the seal of the corporation to be affixed to all papers which may require it; and a committee, to the extent authorized in the resolution or resolutions providing for the issuance of shares of stock adopted by the board of directors as provided in K.S.A. 17-6401, and amendments thereto, may fix the designations and any of the preferences or rights of such shares relating to dividends, redemption, dissolution, any distribution of assets of the corporation or the conversion into, or the exchange of such shares for, shares of any other class or classes or any other series of the same or any other class or classes of stock of the corporation or fix the number of shares of any series of stock or authorize the increase or decrease of the shares of any series; but no such committee shall have the power or authority in reference to amending the articles of incorporation, adopting an agreement of merger or consolidation pursuant to K.S.A. 17-6701 or 17-6702, and amendments thereto, recommending to the stockholders the sale, lease or exchange of all or substantially all of the corporation's property and assets, recommending to the stockholders a dissolution of the corporation or a revocation of a dissolution, or amending the bylaws of the corporation; and, unless the resolution, bylaws or articles of incorporation expressly so provide, no such committee shall have the power or authority to declare a dividend or to authorize the issuance of stock or to adopt a certificate of ownership and merger pursuant to K.S.A. 17-6703, and amendments thereto.

(3) *The board of directors may designate one or more committees, each committee to consist 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 any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another member of the board of directors to act at the meeting in place of any such absent or disqualified member. Any such committee, to the extent provided in the resolution of the board of directors, or in the bylaws of the corporation, shall have and may exercise all the powers and authority of the board of directors in the management of the business and affairs of the corporation, and may authorize the seal of the corporation to be affixed to all papers which may require it; but no such committee shall have the power or authority in reference to the following matters: (A) Approving or adopting, or recommending to the stockholders, any action or matter expressly required by this act to be submitted to stockholders for approval; or (B) adopting, amending or repealing any bylaw of the corporation.*

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

(d) The directors of any corporation may be divided into one, two or three classes by the articles of incorporation or by an initial bylaw, or by a bylaw adopted by a vote of the stockholders; the term of office of those of the first class to expire at the annual meeting next ensuing; of the second class one year thereafter; of the third class two years thereafter; and at each annual election held after such classification and election, directors shall be chosen for a full term, as the case may be, to succeed those whose terms expire. The articles of incorporation may confer upon holders of any class or series of stock the right to elect one or more directors who shall serve for such term, and have such voting powers, as



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

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

(f) Unless otherwise restricted by the articles of incorporation or by-laws, any action required or permitted to be taken at any meeting of the board of directors, ~~or governing body~~, or of any committee thereof may be taken without a meeting if all members of the board ~~or governing body~~ or committee, as the case may be, consent thereto in writing *or by electronic transmission*, and the writing or writings *or electronic transmission or transmissions* are filed with the minutes of proceedings of the board, ~~governing body~~ or committee. *Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.*

(g) Unless otherwise restricted by the articles of incorporation or by-laws, the board of directors ~~or governing body~~ of any corporation organized under this act may hold its meetings, and have an office or offices, outside of this state.

(h) Unless otherwise restricted by the articles of incorporation or by-laws, the board of directors shall have the authority to fix the compensation of directors.

(i) Unless otherwise restricted by the articles of incorporation or by-laws, members of the board of directors ~~or the governing body~~ of any corporation, or any committee designated by such board ~~or body~~, may participate in a meeting of such board, ~~body~~ or committee by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this subsection shall constitute presence in person at such meeting.

(j) The articles of incorporation of any corporation organized under this ~~chapter~~ *act* which is not authorized to issue capital stock may provide that less than  $\frac{1}{3}$  of the members of the governing body may constitute a quorum thereof and may otherwise provide that the business and affairs of the corporation shall be managed in a manner different from that provided in this section. Except as provided by the articles of incorporation, the provisions of this section shall apply to such a corporation and, when so applied, all references to the board of directors, to members thereof and to stockholders shall be deemed to refer to the governing body of the corporation, the members thereof and the members of the corporation respectively.

(k) Any ~~director~~ *number of directors* or the entire board of directors may be removed, with or without cause, by the holders of a majority of the *outstanding* shares then entitled to vote at an election of directors, except as follows:

(1) Unless the articles of incorporation otherwise provides, in the case of a corporation whose board is classified as provided in subsection (d), shareholders may effect such removal only for cause; or

(2) in the case of a corporation having cumulative voting for directors, if less than the entire board is to be removed, no director may be removed without cause if the ~~votes cast~~ *shares voted* against such director's removal would be sufficient to elect such director if then cumulatively voted at an election of the entire board of directors or, if there be classes of directors, at an election of the class of directors of which such director is a part.

Whenever the holders of any class or series are entitled to elect one or more directors by the provisions of the articles of incorporation, the pro-

visions of this subsection shall apply, in respect to the removal without cause of a director or directors so elected, to the vote of the holders of the outstanding shares of that class or series and not to the vote of the outstanding shares as a whole.

Sec. 9. K.S.A. 17-6302 is hereby amended to read as follows: 17-6302. (a) Every corporation organized under this act shall have such officers with such titles and duties as shall be stated in the bylaws or in a resolution of the board of directors which is not inconsistent with the bylaws and as may be necessary to enable it to sign instruments and stock certificates which comply with subsection (a)(2) of K.S.A. 17-6003 and K.S.A. 17-6408, and amendments thereto. One of the officers shall have the duty to record the proceedings of the meetings of the stockholders and directors in a book to be kept for that purpose. Any number of offices may be held by the same person unless the articles of incorporation or bylaws otherwise provide.

(b) Officers shall be chosen in such manner and shall hold their offices for such terms as are prescribed by the bylaws or determined by the board of directors or other governing body. Each officer shall hold the office until such officer's successor is elected and qualified or until such officer's earlier resignation or removal. Any officer may resign at any time upon ~~written~~ notice *given in writing or by electronic transmission* to the corporation.

(c) The corporation may secure the fidelity of any or all of its officers or agents by bond or otherwise.

(d) A failure to select a corporation's officers in accordance with the requirements of the bylaws or a resolution adopted by the board of directors or other governing body shall not dissolve or otherwise affect a corporation.

(e) Any vacancy occurring in any office of the corporation by death, resignation, removal or otherwise shall be filled as the bylaws provide. In the absence of such provision, the vacancy shall be filled by the board of directors or other governing body.

Sec. 10. K.S.A. 17-6305 is hereby amended to read as follows: 17-6305. (a) A corporation shall have power to indemnify any person who was or is a party, or is threatened to be made a party, to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, other than an action by or in the right of the corporation, by reason of the fact that such person is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses, judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding, including attorney fees, if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the corporation; and, with respect to any criminal action or proceeding, had no reasonable cause to believe such person's conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of *nolo contendere* or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which such person reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that such person's conduct was unlawful.

(b) A corporation shall have power to indemnify any person who was or is a party, or is threatened to be made a party, to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that such person is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against expenses actually and reasonably incurred by such person in connection with the defense or settlement of such action or suit, including attorney fees, if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the corporation and except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the corporation unless and only to the extent that the court in which such action or suit was

brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the court shall deem proper.

(c) To the extent that a *present or former* director, officer, employee or agent of a corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in subsections (a) and (b), or in defense of any claim, issue or matter therein, such director, officer, employee or agent shall be indemnified against expenses actually and reasonably incurred by such person in connection therewith, including attorney fees.

(d) Any indemnification under subsections (a) and (b), unless ordered by a court, shall be made by the corporation only as authorized in the specific case upon a determination that indemnification of the *present or former* director, officer, employee or agent is proper in the circumstances because such director, officer, employee or agent has met the applicable standard of conduct set forth in subsections (a) and (b). Such determination shall be made, *with respect to a person who is a director or officer at the time of such determination:* (1) ~~by the board of directors~~ By a majority vote of a quorum consisting of the directors who were not parties to such action, suit or proceeding, ~~or (2) if such a quorum is not obtainable, or even if obtainable, a quorum of disinterested directors so directs, even though less than a quorum;~~ (2) *by a committee of such directors designated by majority vote of such directors, even though less than a quorum;* (3) *if there are no such directors, or if such directors so direct,* by independent legal counsel in a written opinion;; ~~(3) (4) by the stockholders.~~

(e) Expenses, *including attorney fees*, incurred by a director or officer in defending a civil ~~or~~ criminal, *administrative or investigative* action, suit or proceeding may be paid by the corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of the director or officer to repay such amount if it is ultimately determined that the director or officer is not entitled to be indemnified by the corporation as authorized in this section. Such expenses, *including attorney fees, incurred by former directors and officers* or incurred by other employees and agents may be so paid upon such terms and conditions, if any, as the board of directors deems appropriate.

(f) The indemnification and advancement of expenses provided by, or granted pursuant to, the other subsections of this section shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under any bylaw, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in a person's official capacity and as to action in another capacity while holding such office.

(g) A corporation shall have power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against such person and incurred by such person in any such capacity, or arising out of such person's status as such, whether or not the corporation would have the power to indemnify such person against such liability under the provisions of this section.

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

(i) For purposes of this section, references to "other enterprises" shall include employee benefit plans; references to "fines" shall include any excise taxes assessed on a person with respect to any employee benefit

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

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

New Sec. 11. A corporation may agree to submit a matter to a vote of its stockholders whether or not the board of directors determines at any time subsequent to approving such matter that such matter is no longer advisable and recommends that the stockholders reject or vote against the matter.

Sec. 12. K.S.A. 2003 Supp. 17-6401 is hereby amended to read as follows: 17-6401. (a) Every corporation, ~~whether or not organized for profit,~~ may issue one or more classes of stock or one or more series of stock within any class thereof, any or all of which classes may be of stock with par value or stock without par value and which classes or series may have such voting powers, full or limited, or no voting powers, and such designations, preferences and relative, participating, optional or other special rights, and qualifications, limitations or restrictions thereof, as shall be stated and expressed in the articles of incorporation or of any amendment thereto, or in the resolution or resolutions providing for the issue of such stock adopted by the board of directors pursuant to authority expressly vested in it by the ~~provisions of its~~ articles of incorporation. Any of the ~~voting~~ powers, designations, preferences, rights and qualifications, limitations or restrictions of any such class or series of stock may be made dependent upon facts ascertainable outside the articles of incorporation or of any amendment thereto, or outside the resolution or resolutions providing for the issue of such stock adopted by the board of directors pursuant to authority expressly vested in it by the ~~provisions of its~~ articles of incorporation, provided that the manner in which such facts shall operate upon the voting powers, designations, preferences, rights and qualifications, limitations or restrictions of such class or series of stock is clearly and expressly set forth in the articles of incorporation or in the resolution or resolutions providing for the issue of such stock adopted by the board of directors. *The term “facts,” as used in this subsection, includes, but is not limited to, the occurrence of any event, including a determination or action by any person or body, including the corporation.* The power to increase or decrease or otherwise adjust the capital stock as provided in this act shall apply to all or any such classes of stock.

(b) The stock of any class or series may be made subject to redemption by the corporation at its option or at the option of the holders of such stock or upon the happening of a specified event, ~~except that at the time of.~~ *Immediately following any such redemption the corporation shall have outstanding one or more shares of at least one class one or more classes or series of stock with, which share, or shares together, shall have full voting powers which shall not be subject to redemption.* Notwithstanding the foregoing limitation:

(1) Any stock of a regulated investment company registered under the investment company act of 1940 (15 U.S.C. §§ 80a-1 *et seq.*), and amendments thereto, may be made subject to redemption by the corporation at its option or at the option of the holders of such stock; and

(2) any stock of a corporation which holds directly or indirectly a license or franchise from a governmental agency to conduct its business or is a member of a national securities exchange, which license, franchise or membership is conditioned upon some or all of the holders of its stock possessing prescribed qualifications, may be made subject to redemption by the corporation to the extent necessary to prevent the loss of such license, franchise or membership or to reinstate it.

Any stock which may be made redeemable under this section may be redeemed for cash, property or rights, including securities of the same or another corporation, at such time or times, price or prices, or rate or

rates, and with such adjustments, as shall be stated in the articles of incorporation or in the resolution or resolutions providing for the issue of such stock adopted by the board of directors pursuant to subsection (a).

(c) The holders of preferred or special stock of any class or of any series thereof shall be entitled to receive dividends at such rates, on such conditions and at such times as shall be stated in the articles of incorporation or in the resolution or resolutions providing for the issue of such stock adopted by the board of directors as hereinabove provided, payable in preference to, or in such relation to, the dividends payable on any other class or classes or of any other series of stock, and cumulative or noncumulative as shall be so stated and expressed. When dividends upon the preferred and special stocks, if any, to the extent of the preference to which such stocks are entitled, shall have been paid or declared and set apart for payment, a dividend on the remaining class or classes or series of stock may then be paid out of the remaining assets of the corporation available for dividends as elsewhere in this act provided.

(d) The holders of the preferred or special stock of any class or of any series thereof shall be entitled to such rights upon the dissolution of, or upon any distribution of the assets of, the corporation as shall be stated in the articles of incorporation or in the resolution or resolutions providing for the issue of such stock adopted by the board of directors as hereinabove provided.

(e) At the option of either the holder or the corporation or upon the happening of a specified event, any stock of any class or of any series thereof may be made convertible into or exchangeable for shares of any other class or classes or any other series of the same or any other class or classes of stock of the corporation, at such price or prices or at such rate or rates of exchange and with such adjustments as shall be stated in the articles of incorporation or in the resolution or resolutions providing for the issue of such stock adopted by the board of directors as hereinabove provided.

(f) If any corporation shall be authorized to issue more than one class of stock or more than one series of any class, the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences or rights shall be set forth in full or summarized on the face or back of the certificate which the corporation shall issue to represent certificated shares of such class or series of stock. Except as otherwise provided in K.S.A. 17-6426, and amendments thereto, in lieu of the foregoing requirements, there may be set forth on the face or back of the certificate which the corporation issues to represent such class or series of stock, a statement that the corporation will furnish without charge to each stockholder who so requests the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences or rights, *or both*. Within a reasonable time after the issuance or transfer of uncertificated stock, the corporation shall send to the registered owner thereof a written notice containing the information required to be set forth or stated on certificates pursuant to this section or K.S.A. 17-6406, subsection (a) of K.S.A. 17-6426 or subsection (a) of K.S.A. 17-6508, and amendments thereto, or with respect to this section a statement that the corporation will furnish without charge to each stockholder who requests the powers, designations, preferences and relative participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences or rights, or both. Except as otherwise expressly provided by law, the rights and obligations of the holders of uncertificated stock and the rights and obligations of the holders of certificates representing stock of the same class and series shall be identical.

(g) When any corporation desires to issue any shares of stock of any class or of any series of any class of which the ~~voting~~ powers, designations, preferences and relative, participating, optional or other rights, if any, or the qualifications, limitations or restrictions thereof, if any, shall not have been set forth in the articles of incorporation or in any amendment thereto, but shall be provided for in a resolution or resolutions adopted by the board of directors pursuant to authority expressly vested in it by ~~the provisions of~~ the articles of incorporation or any amendment thereto, a certificate of designations setting forth a copy of such resolution or

resolutions and the number of shares of stock of such class or series shall be executed and filed in accordance with K.S.A. 17-6003, and amendments thereto. Unless otherwise provided in any such resolution or resolutions, the number of shares of stock of any such series to which such resolution or resolutions apply may be increased, but not above the total number of authorized shares of the class, or decreased, but not below the number of shares thereof then outstanding, by a certificate likewise executed and filed setting forth a statement that a specified increase or decrease had been authorized and directed by a resolution or resolutions likewise adopted by the board of directors. In case the number of such shares shall be decreased, the number of shares specified in the certificate shall resume the status which they had prior to the adoption of the first resolution or resolutions. When no share of any such class or series are outstanding, either because none were issued or because no issued shares of any such class or series remain outstanding, a certificate setting forth a resolution or resolutions adopted by the board of directors that none of the authorized shares of such class or series are outstanding and that none will be issued may be executed and filed in accordance with K.S.A. 17-6003, and amendments thereto. When such certificate becomes effective, it shall have the effect of eliminating from the articles of incorporation all reference to such class or series of stock. Unless otherwise provided in the articles of incorporation, if no shares of stock have been issued of a class or series of stock established by a resolution of the board of directors, the voting powers, designations, preferences and relative, participating, optional or other rights, if any, or the qualifications, limitations or restrictions thereof, may be amended by a resolution or resolutions adopted by the board of directors. A certificate which: (1) States that no shares of the class or series have been issued; (2) sets forth a copy of the resolution or resolutions; and (3) if the designation of the class or series is being changed, indicates the original designation and the new designation; shall be executed and filed and shall become effective in accordance with K.S.A. 17-6003, and amendments thereto. When any certificate filed under this subsection becomes effective, it shall have the effect of amending the articles of incorporation, except that neither the filing of such certificate nor the filing of restated articles of incorporation pursuant to K.S.A. 17-6605, and amendments thereto, shall prohibit the board of directors from subsequently adopting such resolutions as authorized by this subsection.

Sec. 13. K.S.A. 17-6402 is hereby amended to read as follows: 17-6402. The consideration, as determined pursuant to subsections (a) and (b) of K.S.A. 17-6403, and amendments thereto, for subscriptions to, or the purchase of, the capital stock to be issued by a corporation shall be paid in such form and in such manner as the board of directors shall determine. In the absence of actual fraud in the transaction, the judgment of the directors as to the value of such consideration shall be conclusive. *The board of directors may authorize shares to be issued for consideration consisting of any tangible or intangible property or benefit to the corporation including cash, promissory notes, services performed, contracts for services to be performed or other securities of the corporation. Before the corporation issues shares, the board of directors must determine that the consideration received or to be received for shares to be issued is adequate. That determination by the board of directors is conclusive as to the adequacy of consideration for the issuance of shares.* The capital stock so issued shall be deemed to be fully paid and nonassessable stock if: (a) The entire amount of such consideration has been received by the corporation in the form of cash, services rendered, personal property, real property, leases of real property, or a combination thereof *or forms authorized by the board of directors*; or (b) not less than the amount of the consideration determined to be capital pursuant to K.S.A. 17-6404, and amendments thereto, has been received by the corporation in ~~such~~ *the form or forms authorized by the board of directors* and the corporation has received a binding obligation of the subscriber or purchaser to pay the balance of the subscription or purchase price; provided, however, nothing contained herein shall prevent the board of directors from issuing partly paid shares under K.S.A. 17-6406, and amendments thereto.

Sec. 14. K.S.A. 17-6407 is hereby amended to read as follows: 17-6407. (a) Subject to any provisions in the articles of incorporation, every corporation may create and issue, whether or not in connection with the issue and sale of any shares of stock or other securities of the corporation,

rights or options entitling the holders thereof to purchase from the corporation any shares of its capital stock of any class or classes, such rights or options to be evidenced by or in such instrument or instruments as shall be approved by the board of directors.

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

(c) *The board of directors, by resolution adopted by the board, may authorize one or more officers of the corporation to do one or both of the following: (1) Designate officers and employees of the corporation or any of its subsidiaries to be recipients of such rights or options created by the corporation; and (2) determine the number of such rights or options to be received by such officers and employees. The resolution so authorizing such officer or officers shall specify the total number of rights or options such officer or officers may award. The board of directors may not authorize an officer to designate the officer's self as a recipient of any such rights or options.*

(d) In the event that the shares of stock in the corporation to be issued upon the exercise of such rights or options shall be shares having a par value, the price or prices so to be received therefor shall not be less than the par value thereof. In case the shares of stock so to be issued shall be shares of stock without par value, the consideration therefor shall be determined in the manner provided in K.S.A. 17-6403, *and amendments thereto.*

Sec. 15. K.S.A. 17-6408 is hereby amended to read as follows: 17-6408. The shares of a corporation shall be represented by certificates, ~~provided~~ *except* that the board of directors of the corporation may provide by resolution or resolutions that some or all of any or all classes or series of its stock shall be uncertificated shares. Any such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the corporation. Notwithstanding the adoption of such a resolution by the board of directors, every holder of stock represented by certificates and upon request every holder of uncertificated shares shall be entitled to have a certificate signed by, or in the name of the corporation by the chairperson or vice-chairperson of the board of directors, or the president or vice-president, and by the treasurer or an assistant treasurer, or the secretary or assistant secretary of such corporation representing the number of shares registered in certificate form. Any or all of the signatures on the certificate may be a facsimile. In the event that any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate has ceased to be such officer, transfer agent or registrar before such certificate is issued, ~~such certificate~~ *such certificate* may be issued by the corporation with the same effect as if the person were such officer, transfer agent or registrar at the date of issue. *A corporation shall not have power to issue a certificate in bearer form.*

Sec. 16. K.S.A. 17-6410 is hereby amended to read as follows: 17-6410. (a) Every corporation may purchase, *redeem*, receive, take or otherwise acquire, own and hold, sell, lend, exchange, transfer or otherwise dispose of, pledge, use and otherwise deal in and with its own shares; provided, however, that no corporation shall:

(1) Purchase or redeem its own shares of capital stock for cash or other property when the capital of the corporation is impaired or when such purchase or redemption would cause any impairment of the capital of the corporation, except that a corporation may purchase or redeem out of capital any of its own shares which are entitled upon any distribution of its assets, whether by dividend or in liquidation, to a preference over another class or series of its stock, *or, if no shares entitled to such a preference are outstanding, any of its own shares*, if such shares will be retired upon their acquisition and the capital of the corporation reduced in accordance with K.S.A. 17-6603 and 17-6604, and amendments

thereto. Nothing in this subsection shall invalidate or otherwise affect a note, debenture or other obligation of a corporation given by it as consideration for its acquisition by purchase, redemption or exchange of its shares of stock if at the time such note, debenture or obligation was delivered by the corporation its capital was not then impaired or did not thereby become impaired;

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

(3) redeem any of its shares unless their redemption is authorized by subsection (b) of K.S.A. 17-6401, and amendments thereto, and then only in accordance with such section and the articles of incorporation.

(b) Nothing in this section limits or affects a corporation's right to resell any of its shares theretofore purchased or redeemed out of surplus and which have not been retired, for such consideration as shall be fixed by the board of directors.

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

(d) Shares which have been called for redemption shall not be deemed to be outstanding shares for the purpose of voting or determining the total number of shares entitled to vote on any matter on and after the date on which written notice of redemption has been sent to ~~the holder~~ *holders* thereof and a sum sufficient to redeem such ~~share~~ *shares* has been irrevocably deposited or set aside to pay the redemption price to the holders of the shares upon surrender of certificates therefor.

Sec. 17. K.S.A. 17-6412 is hereby amended to read as follows: 17-6412. (a) When the whole of the consideration payable for shares of a corporation has not been paid in, and the assets shall be insufficient to satisfy the claims of its creditors, each holder of or subscriber for such shares shall be bound to pay on each share held or subscribed for by ~~him~~ *such holder or subscriber* the sum necessary to complete the amount of the unpaid balance of the consideration for which such shares were issued or *are* to be issued by the corporation.

(b) The amounts which shall be payable as provided in subsection (a) of this section may be recovered as provided in K.S.A. 17-7101, *and amendments thereto*, after a writ of execution against the corporation has been returned unsatisfied as provided in ~~that~~ *such* section.

(c) Any person becoming an assignee or transferee of shares or of a subscription for shares in good faith and without knowledge or notice that the full consideration therefor has not been paid shall not be personally liable for any unpaid portion of such consideration, but the transferor shall remain liable therefor.

(d) No person holding shares in any corporation as collateral security shall be personally liable as a stockholder, but the person pledging such shares shall be considered the holder thereof and shall be so liable. No executor, administrator, guardian, trustee or other fiduciary shall be personally liable as a stockholder, but the estate or funds held by such executor, administrator, guardian, trustee or other fiduciary in such fiduciary capacity shall be so liable.

(e) Commencing with the date of issuance of the stock or the date of the subscription upon which the assessment is sought, the limitation of time prescribed by K.S.A. 60-511, *and amendments thereto*, shall be applicable to any liability asserted under this section or under K.S.A. 17-7101, *and amendments thereto*.

(f) In any action by a receiver or trustee of an insolvent corporation or by a judgment creditor to obtain an assessment under this section, any stockholder or subscriber for stock of the insolvent corporation may appear and contest the claim or claims of such receiver or trustee.

Sec. 18. K.S.A. 17-6417 is hereby amended to read as follows: 17-6417. A corporation may issue a new certificate of stock or uncertificated shares in ~~the~~ place of any certificate theretofore issued by it, alleged to have been lost, stolen or destroyed, and the corporation may require the owner of the allegedly lost, stolen or destroyed certificate, or ~~his~~ *such owner's* legal representative, to give the corporation a bond sufficient to



indemnify it against any claim that may be made against it on account of the alleged loss, theft or destruction of any such certificate or the issuance of such new certificate or uncertificated shares.

Sec. 19. K.S.A. 17-6418 is hereby amended to read as follows: 17-6418. (a) If a corporation refuses to issue *new uncertificated shares* or a new certificate of stock in place of ~~one~~ *a certificate* theretofore issued by it, or by any corporation of which it is the lawful successor, which certificate is alleged to have been lost, stolen or destroyed, the owner of the lost, stolen or destroyed certificate or the owner's legal representative, may commence an action in district court for an order requiring the corporation to show cause why it should not issue new uncertificated shares or a new certificate of stock in place of the ~~one~~ *certificate* so lost, stolen or destroyed. The petition in such action shall state the name of the corporation, the number and date of the certificate, if known or ascertainable by the plaintiff, the number of shares of stock represented thereby and to whom issued, and a statement of the circumstances attending such loss, theft or destruction. Thereupon the court shall make an order requiring the corporation to show cause at a time and place therein designated, why it should not issue new uncertificated shares or a new certificate of stock in place of the one described in the complaint. A copy of the complaint and order shall be served upon the corporation at least five days before the time designated in the order.

(b) If, upon hearing, the court is satisfied that the plaintiff is the lawful owner of the number of shares of capital stock, or any part thereof, described in the petition, and that the certificate therefor has been lost, stolen or destroyed, and no sufficient cause has been shown why new uncertificated shares or a new certificate should not be issued in place thereof, it shall enter an order requiring the corporation to issue and deliver to the plaintiff new uncertificated shares or a new certificate for such shares. In its order the court shall direct that, prior to the issuance and delivery to the plaintiff of such new uncertificated shares or a new certificate, the plaintiff give the corporation a bond in such form and with such security as to the court appears sufficient to indemnify the corporation against any claim that may be made against it on account of the alleged loss, theft or destruction of any such certificate or the issuance of such new uncertificated shares or new certificate. No corporation which has issued uncertificated shares or a certificate pursuant to an order of the court entered hereunder shall be liable in an amount in excess of the amount specified in such bond.

Sec. 20. K.S.A. 17-6420 is hereby amended to read as follows: 17-6420. (a) The directors of every corporation, subject to any restrictions contained in its articles of incorporation, may declare and pay dividends upon the shares of its capital stock, *or to its members if the corporation is a nonstock corporation*, either (1) out of its surplus, as defined in and computed in accordance with K.S.A. 17-6404 and 17-6604, and amendments thereto, or (2) in case there shall be no such surplus, out of its net profits for the fiscal year in which the dividend is declared or the preceding fiscal year, *or both*. If the capital of the corporation, computed in accordance with K.S.A. 17-6404 and 17-6604, and amendments thereto, shall have been diminished by depreciation in the value of its property, or by losses, or otherwise, to an amount less than the aggregate amount of the capital represented by the issued and outstanding stock of all classes having a preference upon the distribution of assets, the directors of such corporation shall not declare and pay out of such net profits any dividends upon any shares of any classes of its capital stock until the deficiency in the amount of capital represented by the issued and outstanding stock of all classes having a preference upon the distribution of assets shall have been repaired. *Nothing in this subsection shall invalidate or otherwise affect a note, debenture or other obligation of the corporation paid by it as a dividend on shares of its stock, or any payment made thereon, if at the time such note, debenture or obligation was delivered by the corporation, the corporation had either surplus or net profits as provided in clause (1) or (2) from which the dividend could lawfully have been paid.*

(b) Subject to any restrictions contained in its articles of incorporation, the directors of any corporation engaged in the exploitation of wasting assets, including but not limited to a corporation engaged in the exploitation of natural resources or other wasting assets, including patents, or engaged primarily in the liquidation of specific assets, may determine the net profits derived from the exploitation of such wasting assets or the

net proceeds derived from such liquidation without taking into consideration the depletion of such assets resulting from lapse of time, consumption, liquidation or exploitation of such assets.

Sec. 21. K.S.A. 17-6422 is hereby amended to read as follows: 17-6422. A member of the board of directors, or a member of any committee designated by the board of directors, shall be fully protected in relying in good faith upon the records of the corporation and upon such information, opinions, reports or statements presented to the corporation by any of its officers or employees, or committees of the board of directors, or by any other person as to matters the director reasonably believes are within such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the corporation, as to the value and amount of the assets, liabilities or net profits, *or both* of the corporation or any other facts pertinent to the existence and amount of surplus or other funds from which dividends might properly be declared and paid, or with which the corporation's stock might properly be purchased or redeemed.

Sec. 22. K.S.A. 17-6423 is hereby amended to read as follows: 17-6423. No corporation shall pay dividends except in accordance with ~~the provisions~~ of this act. Dividends may be paid in cash, in property or in shares of the corporation's capital stock. If the dividend is to be paid in shares of the corporation's theretofore unissued capital stock, the board of directors shall, by resolution, direct that there be designated as capital in respect of such shares an amount which is not less than the aggregate par value of par value shares being declared as a dividend and, in the case of shares without par value being declared as a dividend, such amount as shall be determined by the board of directors. *No such designation as capital shall be necessary if shares are being distributed by a corporation pursuant to a split-up or division of its stock rather than as payment of a dividend declared payable in stock of the corporation.*

Sec. 23. K.S.A. 17-6424 is hereby amended to read as follows: 17-6424. (a) In case of any willful or negligent violation of the provisions of K.S.A. 17-6410; ~~or 17-6423 or 17-6603~~, *and amendments thereto*, the directors under whose administration the same may happen shall be jointly and severally liable, at any time within three ~~(3)~~ years after paying such unlawful dividend or after such unlawful stock purchase or redemption, to the corporation, and to its creditors in the event of its dissolution or insolvency, to the full amount of the dividend unlawfully paid, or to the full amount unlawfully paid for the purchase or redemption of the corporation's stock, with interest from the time such liability accrued. Any director who may have been absent when the same was done, or who may have dissented from the act or resolution by which the same was done, may ~~exonerate himself~~ *be exonerated* from such liability by causing ~~his~~ *such director's* dissent to be entered on the books containing the minutes of the proceedings of the directors at the time the same was done, or immediately after ~~he~~ *such director* has notice of the same.

(b) Any director against whom a claim is successfully asserted under this section shall be entitled to contribution from the other directors who voted for or concurred in the unlawful dividend, stock purchase or stock redemption.

(c) Any director against whom a claim is successfully asserted under this section shall be entitled, to the extent of the amount paid by ~~him~~ *such director* as a result of such claim, to be subrogated to the rights of the corporation against stockholders who received the dividend on, or assets for the sale or redemption of, their stock with knowledge of facts indicating that such dividend, stock purchase or redemption was unlawful under this act, in proportion to the amounts received by such stockholders respectively.

Sec. 24. K.S.A. 17-6425 is hereby amended to read as follows: 17-6425. Except as otherwise provided in this act, the transfer of stock and the certificates representing certificated *and uncertificated* shares of stock shall be governed by article 8 of the uniform commercial code, *and amendments thereto*.

Sec. 25. K.S.A. 17-6426 is hereby amended to read as follows: 17-6426. (a) A written restriction on the transfer or registration of transfer of a security of a corporation, *or on the amount of the corporation's securities that may be owned by any securities holder or a group of securities holders*, if permitted by this section and noted conspicuously on the

certificate representing the security, or, in the case of uncertificated shares, contained in the notice sent pursuant to *subsection (f) of K.S.A. 17-6401*, and amendments thereto, may be enforced against the holder of the restricted security or any successor or transferee of the holder, including an executor, administrator, trustee, guardian or other fiduciary entrusted with like responsibility for the person or estate of the holder. Unless noted conspicuously on the certificate representing the security, or, in the case of uncertificated shares, contained in the notice sent pursuant to *subsection (f) of K.S.A. 17-6401*, and amendments thereto, restriction, even though permitted by this section, is ineffective except against a person with actual knowledge of the restriction.

(b) A restriction on the transfer or registration of transfer of securities of a corporation, *or on the amount of the corporation's securities that may be owned by any securities holder or a group of securities holders*, may be imposed either by the articles of incorporation or by the bylaws or by an agreement among any number of security holders or among such holders and the corporation. No restriction so imposed shall be binding with respect to securities issued prior to the adoption of the restriction unless the holders of the securities are parties to an agreement or voted in favor of the restriction.

(c) A restriction on the transfer *or registration of transfer* of securities of a corporation *or on the amount of such securities that may be owned by any securities holder or group of securities holders* is permitted by this section if it:

(1) Obligates the holder of the restricted securities to offer to the corporation or to any other holders of securities of the corporation or to any other person or to any combination of the foregoing, a prior opportunity, to be exercised within a reasonable time, to acquire the restricted securities; ~~or~~

(2) obligates the corporation or any holder of securities of the corporation or any other person or any combination of the foregoing, to purchase the securities which are the subject of an agreement respecting the purchase and sale of the restricted securities; ~~or~~

(3) requires the corporation or the holders of any class *or series* of securities of the corporation to consent to any proposed transfer of the restricted securities or to approve the proposed transferee of the restricted securities; ~~or~~, *or to approve the amount of securities of the corporation that may be owned by any securities holder or group of securities holders*;

(4) *obligates the holder of the restricted securities to sell or transfer an amount of restricted securities to the corporation or to any other holders of securities of the corporation or to any other person or to any combination of the foregoing, or causes or results in the automatic sale or transfer of an amount of restricted securities to the corporation or to any other holders of securities of the corporation or to any other person or to any combination of the foregoing; or*

~~(4)~~ (5) prohibits *or restricts* the transfer of the restricted securities to, *or the ownership of restricted securities by*, designated persons or classes of persons *or groups of persons*, and such designation is not manifestly unreasonable.

(d) Any restriction on the transfer ~~of the shares of a corporation for the purpose of maintaining its status as an electing small business corporation under subchapter S of the United States internal revenue code~~ *or of maintaining any other tax advantage to the corporation, is or the registration of transfer of the securities of a corporation, or on the amount of securities of a corporation that may be owned by a securities holder or group of securities holders, for any of the following purposes shall be conclusively presumed to be for a reasonable purpose: (1) Maintaining any local, state, federal or foreign tax advantage to the corporation or its stockholders, including without limitation: (A) Maintaining the corporation's status as an electing small business corporation under subchapter S of the United States internal revenue code, 26 U.S.C. §1371 et seq., (B) maintaining or preserving any tax attribute, including without limitation net operating losses, or (C) qualifying or maintaining the qualification of the corporation as a real estate investment trust pursuant to the United States internal revenue code or regulations adopted pursuant to the United States internal revenue code, or (2) maintaining any statutory or regulatory advantage or complying with any statutory or regulatory requirements under applicable local, state, federal or foreign law.*

(e) Any other lawful restriction on transfer or registration of transfer of securities, or on the amount of securities that may be owned by any person or group of persons, is permitted by this section.

Sec. 26. K.S.A. 17-6501 is hereby amended to read as follows: 17-6501. (a) (1) Meetings of stockholders may be held at such place, either within or without this state, as may be designated by or in the manner provided in the *articles of incorporation*, bylaws or, if not so designated, ~~at the registered office of the corporation in this state; as determined by the board of directors. If the board of directors is authorized to determine the place of a meeting of stockholders, the board of directors, in its sole discretion, may determine that the meeting shall not be held at any place, but may instead be held solely by means of remote communication as authorized by paragraph (a)(2).~~

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

(A) Participate in a meeting of stockholders; and

(B) be deemed present in person and vote at a meeting of stockholders whether such meeting is to be held at a designated place or solely by means of remote communication, provided that: (i) The corporation shall implement reasonable measures to verify that each person deemed present and permitted to vote at the meeting by means of remote communication is a stockholder or proxy holder; (ii) the corporation shall implement reasonable measures to provide such stockholders and proxy holders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the stockholders, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with such proceedings; and (iii) if any stockholder or proxy holder votes or takes other action at the meeting by means of remote communication, a record of such vote or other action shall be maintained by the corporation.

(b) Unless directors are elected by written consent in lieu of an annual meeting as permitted by this subsection, an annual meeting of stockholders shall be held for the election of directors on a date and at a time designated by or in the manner provided in the bylaws. Stockholders, unless the articles of incorporation otherwise provide, may act by written consent to elect directors; except that, if such consent is less than unanimous, such action by written consent may be in lieu of holding an annual meeting only if all of the directorships to which directors could be elected at an annual meeting held at the effective time of such action are vacant and are filled by such action. Any other proper business may be transacted at the annual meeting.

(c) (1) If the articles of incorporation or bylaws of a corporation registered under the investment company act of 1940 so provide, the corporation is only required to hold an annual meeting in any year in which the election of directors is required to be acted upon under the investment company act of 1940.

(2) If a corporation is required under paragraph (1) to hold a meeting of stockholders to elect directors, the meeting shall be designated as the annual meeting of stockholders for that year.

(d) (1) A failure to hold any annual meeting ~~required by this act~~ at the designated time or to elect a sufficient number of directors to conduct the business of the corporation shall not affect otherwise valid corporate acts or work a forfeiture or dissolution of the corporation, except as may be otherwise specifically provided in this act. If the annual meeting for election of directors is not held on the date designated therefor ~~or action by written consent to elect directors, in lieu of an annual meeting, has not been taken~~, the directors shall cause the meeting to be held as soon thereafter as is convenient. If there be a failure to hold the annual meeting ~~or to take action by written consent to elect directors in lieu of an annual meeting~~ for a period of 30 days after the date designated therefor ~~for the annual meeting~~, or if no date has been designated ~~for an annual meeting required by this act~~, for a period of 13 months after the ~~latest to occur of the organization of the corporation or after, its last annual meeting or the last action by written consent to elect directors in lieu of an annual meeting~~, the district court may summarily order a meeting to be held upon the application of any stockholder or director. The shares of stock represented at such meeting, either in person or by proxy, and entitled to vote thereat, shall constitute a quorum for the purpose of such meeting.

notwithstanding any provision of the articles of incorporation or bylaws to the contrary. The district court may issue such orders as may be appropriate, including, without limitation, orders designating the time and place of such meeting, the record date for determination of stockholders entitled to vote and the form of notice of such meeting.

(2) If a corporation is required under paragraph (1) of subsection (c) to hold a meeting of stockholders to elect directors, the meeting shall be held no later than 120 days after the occurrence of the event requiring the meeting.

(e) Special meetings of the stockholders may be called by the board of directors or by such person or persons as may be authorized by the articles of incorporation or by the bylaws.

~~(f) Unless otherwise provided in the articles of incorporation, All elections of directors shall be by written ballot, unless otherwise provided in the articles of incorporation. If authorized by the board of directors, such requirement of a written ballot shall be satisfied by a ballot submitted by electronic transmission, provided that any such electronic transmission must either set forth or be submitted with information from which it can be determined that the electronic transmission was authorized by the stockholder or proxy holder.~~

Sec. 27. K.S.A. 2003 Supp. 17-6502 is hereby amended to read as follows: 17-6502. (a) Unless otherwise provided in the articles of incorporation and subject to the provisions of K.S.A. 17-6503, and amendments thereto, each stockholder shall be entitled to one vote for each share of capital stock held by such stockholder. If the articles of incorporation provide for more or less than one vote for any share on any matter, every reference in this act to a majority or other proportion of stock shall refer to such majority or other proportion of the votes of such stock.

(b) ~~(1)~~ Each stockholder entitled to vote at a meeting of stockholders or to express consent or dissent to corporate action in writing without a meeting may authorize another person or persons to act for the stockholder by proxy as provided in this subsection, but no such proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period.

~~(2) (i) A stockholder may sign a writing authorizing another person to act as proxy.~~

~~(ii) Signing (c) Without limiting the manner in which a stockholder may authorize another person or persons to act for such stockholder as proxy pursuant to subsection (b), the following shall constitute a valid means by which a stockholder may grant such authority: (1) A stockholder may execute a writing authorizing another person or persons to act for such stockholder as proxy. Execution may be accomplished by the stockholder or the stockholder's authorized officer, director, employee or agent signing the writing or causing the stockholder's signature to be affixed to the writing by any reasonable means, including, but not limited to, facsimile signature; and~~

~~(3) (2) a stockholder may authorize another person or persons to act as proxy by transmitting, or authorizing the transmission of, a telegram, cablegram, or other means of electronic transmission, including telephonic transmission, to the person authorized to act as who will be the holder of the proxy or to a proxy solicitation firm, proxy support service organization, or other person like agent duly authorized by the person who will act as proxy to receive the transmission, provided that any such telegram, cablegram or other means of electronic transmission must either contain or be accompanied by set forth or be submitted with information from which it can be determined that the stockholder authorized the transmission.~~

~~(4) (d) A copy, facsimile telecommunication, or other reliable reproduction of the writing or transmission authorized under paragraphs (2) and (3) of this subsection (c)(1) and (c)(2) may be substituted for the original writing or transmission for any purpose for which the original writing or transmission could be used, except that such copy, facsimile telecommunication or other reproduction shall be a complete reproduction of the entire original writing or transmission.~~

~~(e) (e) A duly executed proxy shall be irrevocable if it states that it is irrevocable and if, and only as long as, it is coupled with an interest sufficient in law to support an irrevocable power. A proxy may be made irrevocable regardless of whether the interest with which it is coupled is~~

an interest in the stock itself or an interest in the corporation generally.

Sec. 28. K.S.A. 17-6503 is hereby amended to read as follows: 17-6503. (a) In order that the corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, the board of directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the board of directors, and which record date shall not be more than 60 nor less than 10 days before the date of such meeting. If no record is fixed by the board of directors, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting except that the board of directors may fix a new record date for the adjourned meeting.

(b) In order that the corporation may determine the stockholders entitled to consent to corporate action in writing without a meeting, the board of directors may fix a record date which record date shall not precede the date upon which the resolution fixing the record date is adopted by the board of directors, and which date shall not be more than 10 days after the date upon which the resolution fixing the record date is adopted by the board of directors. If no record date has been fixed by the board of directors, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting, when no prior action by the board of directors is required by this act, shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the corporation by delivery to its registered office in this state, its principal place of business, or an officer or agent of the corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery made to a corporation's registered office shall be by hand or by certified or registered mail, return receipt requested. If no record date has been fixed by the board of directors and prior action by the board of directors is required by this act, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting shall be at the close of business on the day on which the board of directors adopts the resolution taking such prior action.

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

Sec. 29. K.S.A. 17-6504 is hereby amended to read as follows: 17-6504. The articles of incorporation of any corporation may provide that at all elections of directors of the corporation, or at elections held under specified circumstances, each holder of stock or of any class or classes or of a series or series thereof shall be entitled to as many votes as shall equal the number of votes which, except for such provision as to cumulative voting, such holder would be entitled to cast for the election of directors with respect to such holder's shares of stock multiplied by the number of directors to be elected by ~~each~~ *such* holder, and that such holder may cast all of such votes for a single director or may distribute them among the number to be voted for, or for any two or more of them as such holder may see fit, provided that this ~~act~~ *section* shall not apply to a corporation organized ~~prior to the effective date of this act~~ *before April 21, 1988*, unless the stockholders of such corporation shall amend its articles of incorporation to eliminate the requirements of cumulative voting in force at the time of its organization.

Sec. 30. K.S.A. 17-6505 is hereby amended to read as follows: 17-6505. (a) The provisions of K.S.A. 17-6501 to 17-6504 and K.S.A. 17-6506, and amendments thereto, shall not apply to corporations not au-

thorized to issue stock, *except that subsection (a) of K.S.A. 17-6501 and subsection (c) and (d) of K.S.A. 17-6502, and amendments thereto, shall apply to such corporations, and, when so applied, all references therein to stockholders and to the board of directors shall be deemed to refer to the members and the governing body of a nonstock corporation, respectively.*

(b) Unless otherwise provided in the articles of incorporation of a nonstock corporation, each member shall be entitled at every meeting of members to one vote in person or by proxy, but no proxy shall be voted after three ~~(3)~~ years from its date, unless the proxy provides for a longer period.

(c) Unless otherwise provided in this act, the articles of incorporation or bylaws of a nonstock corporation may specify the number of members having voting power who shall be present or represented by proxy at any meeting in order to constitute a quorum for, and the votes, *or portion thereof*, that shall be necessary for, the transaction of any business. In the absence of such specification in the articles of incorporation or bylaws of a nonstock corporation, ~~1/3 of the members of such corporation shall constitute a quorum at a meeting of such members, and the members present in person or represented by proxy after proper notice has been given shall constitute a quorum at a meeting of such members.~~ In all matters other than the election of the governing body of the corporation, the affirmative vote of a majority of such members present in person or represented by proxy at the meeting and entitled to vote on the subject matter shall be the act of the members, unless the vote of a greater number is required by this ~~chapter~~ act, the articles of incorporation or bylaws.

(d) *Members of the governing body shall be elected by a plurality of the votes of the members of the corporation present in person or represented by proxy at the meeting and entitled to vote thereon.*

(e) If the election of the governing body of any nonstock corporation shall not be held ~~on the day~~ *within the time period* designated by the bylaws, the governing body shall cause the election to be held as soon thereafter as convenient. The failure to hold such an election ~~at the designated time~~ *within the time period* shall not work any forfeiture or dissolution of the corporation, but the district court may summarily order such an election to be held upon the application of any member of the corporation. At any election pursuant to such order, the persons entitled to vote in such election who shall be present at such meeting, either in person or by proxy, shall constitute a quorum for such meeting, notwithstanding any provision of the articles of incorporation or the bylaws of the corporation to the contrary.

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

Sec. 31. K.S.A. 17-6506 is hereby amended to read as follows: 17-6506. Subject to the provisions of this act with respect to the vote that shall be required for a specified action, the articles of incorporation or bylaws of any corporation *authorized to issue stock* may specify the number of shares or the amount of other securities ~~conferring~~, *or both, having* voting power, the holders of which shall be present or represented by proxy at any meeting in order to constitute a quorum for, and the votes that shall be necessary for, the transaction of any business, but in no event shall a quorum ~~at the meeting consist of the holders of less than 1/3 of the shares conferring voting powers~~ *consist of holders of less than 1/3 of the shares entitled to vote at the meeting, except that, where a separate vote by the holders of a class or series or classes or series is required, a quorum shall consist of no less than 1/3 of the holders of the shares of such class or series or classes or series.* In the absence of such specification in the articles of incorporation or bylaws of the corporation:

(a) The holders of a majority of the shares ~~conferring voting powers~~ *entitled to vote*, present in person or represented by proxy, shall constitute a quorum at a meeting of stockholders;

(b) in all matters other than the election of directors, the affirmative vote of the holders of a majority of shares who are present in person or represented by proxy at the meeting and entitled to vote on the subject matter shall be the act of the stockholders;

(c) directors shall be elected by a plurality of the votes of the ~~stock-~~

holders *shares* present in person or represented by proxy at the meeting and entitled to vote on the election of directors; and

(d) where a separate vote by a class or classes ~~of stockholders~~ or *series* is required, the holders of a majority of the outstanding shares of such class or classes or *series*, present in person or represented by proxy, shall constitute a quorum entitled to take action with respect to that vote on that matter and the affirmative vote of the holders of a majority of shares of such class or classes or *series* who are present in person or represented by proxy at the meeting shall be the act of such class or *classes* or *series*.

Sec. 32. K.S.A. 17-6507 is hereby amended to read as follows: 17-6507. (a) Persons holding stock in a fiduciary capacity shall be entitled to vote the shares so held. Persons whose stock is pledged shall be entitled to vote, unless in the transfer by the pledgor on the books of the corporation ~~he~~ *such person* has expressly empowered the pledgee to vote thereon, in which case only the pledgee, or ~~his~~ *such pledgee's* proxy, may represent such stock and vote thereon.

(b) If shares or other securities having voting power stand of record in the names of two ~~(2)~~ or more persons, whether fiduciaries, members of a partnership, joint tenants, tenants in common, tenants by the entirety or otherwise, or if two ~~(2)~~ or more persons have the same fiduciary relationship respecting the same shares, unless the secretary of the corporation is given written notice to the contrary and is furnished with a copy of the instrument or order appointing them or creating the relationship wherein it is so provided, their acts with respect to voting shall have the following effect:

- (1) If only one votes, ~~his~~ *such person's* act binds all;
- (2) If more than one vote, the act of the majority so voting binds all;
- (3) If more than one vote, but the vote is evenly split on any particular matter, each ~~fraction~~ *fraction* may vote the securities in question proportionally, or any person voting the shares, or a beneficiary, if any, may apply to the district court for the appointment of an additional person to act with the persons so voting the shares, which shall then be voted as determined by a majority of such persons and the person appointed by the court. If the instrument so filed shows that any such tenancy is held in unequal interests, a majority or even-split for the purpose of this subsection shall be a majority or even-split in interest.

Sec. 33. K.S.A. 17-6508 is hereby amended to read as follows: 17-6508. (a) One or more stockholders, by agreement in writing, may *deposit capital stock of an original issue with or* transfer capital stock to any person or persons, or ~~corporation or corporations~~ *entity or entities* authorized to act as trustee, for the purpose of vesting in such person or persons, ~~corporation or corporations~~ *entity or entities*, who may be designated voting trustee, or voting trustees, the right to vote thereon for any period of time determined by such agreement, ~~not exceeding 10 years~~, upon the terms and conditions stated in such agreement. ~~The validity of a voting trust agreement, otherwise lawful, shall not be affected during a period of 10 years from the date when it was created or last extended, as provided in subsection (b), by the fact that under its terms it will or may last beyond such 10-year period.~~ The agreement may contain any other lawful provisions not inconsistent with such purpose. After the filing of a copy of the agreement in the registered office of the corporation in this state, which copy shall be open to the inspection of any stockholder of the corporation, or any beneficiary of the trust under the agreement, daily during business hours, certificates of stock or uncertificated stock shall be issued to the voting trustee or trustees to represent any stock of an original issue so deposited with such *voting* trustee or ~~such~~ trustees, and any certificates of stock or uncertificated stock so transferred to the voting trustee or trustees shall be surrendered and canceled and new certificates or uncertificated stock therefor shall be issued to the voting trustee or trustees. In the certificates so issued, if any, it shall be stated that they are issued pursuant to such agreement, *or in the case of uncertificated shares, contained in the notice sent pursuant to subsection (f) of K.S.A. 17-6401, and amendments thereto*, and that fact shall also be stated in the stock ledger of the corporation. The voting trustee or trustees may vote the stock so issued or transferred during the period specified in the agreement. Stock standing in the name of the voting trustee or trustees may be voted either in person or by proxy, and in voting the stock, the voting trustee or trustees shall incur no responsibility as stockholder, trustee or otherwise, except for such voting trustee's or trustees'



individual malfeasance. In any case where two or more persons or entities are designated as voting trustees, and the right and method of voting any stock standing in their names at any meeting of the corporation are not fixed by the agreement appointing the trustees, the right to vote the stock and the manner of voting it at the meeting shall be determined by a majority of the trustees, or if they be equally divided as to the right and manner of voting the stock in any particular case, the vote of the stock in such case shall be divided equally among the trustees.

(b) ~~At any time within two years prior to the time of expiration of any Any amendment to a voting trust agreement, as originally fixed or as last extended as provided in this subsection, one or more beneficiaries of the trust under the voting trust agreement, by written agreement and with the written consent of the voting trustee or trustees, may extend the duration of the voting trust agreement for an additional period not exceeding 10 years from the expiration date of the trust as originally fixed or as last extended, as provided in this subsection. Prior to the time of expiration of any such voting trust agreement, as originally fixed or as previously extended, as the case may be, the voting trustee or trustees shall file shall be made by a written agreement, a copy of which shall be filed in the registered office of the corporation in this state a copy of such extension agreement and of such voting trustee's or trustees' consent thereto, and thereupon the duration of the voting trust agreement shall be extended for the period fixed in the extension agreement. No such extension agreement shall affect the rights or obligations of persons not parties thereto.~~

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

(d) This section shall not be deemed to invalidate or otherwise affect any voting or other agreement among stockholders or any irrevocable proxy which is not otherwise illegal.

Sec. 34. K.S.A. 17-6509 is hereby amended to read as follows: 17-6509. (a) The officer who has charge of the stock ledger of a corporation shall prepare and make, at least 10 days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. *Nothing contained in this section shall require the corporation to include electronic mail addresses or other electronic contact information on such list.* Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, ~~during ordinary business hours,~~ for a period of at least 10 days prior to the meeting, ~~either at a place within the city where the meeting is to be held, which place shall be specified in the notice of the meeting, or, if not so specified, at the place where:~~ (1) *On a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting;* or (2) *during ordinary business hours, at the principal place of business of the corporation. In the event the corporation determines to make the list available on an electronic network, the corporation may take reasonable steps to ensure that such information is available only to stockholders of the corporation. If the meeting is to be held at a place, then the list shall also be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present. If the meeting is to be held solely by means of remote communication, then the list shall also be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting.*

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

(c) The stock ledger shall be the only evidence as to who are the stockholders entitled by *this section* to examine the ~~stock ledger, the list~~

required by this section ~~or the books of the corporation~~, or to vote in person or by proxy at any meeting of ~~the~~ stockholders.

Sec. 35. K.S.A. 17-6510 is hereby amended to read as follows: 17-6510. (a) As used in this section, ~~“stockholder” means a stockholder of record~~: (1) “Stockholder” means a holder of record of stock in a stock corporation, or a person who is the beneficial owner of shares of such stock held either in a voting trust or by a nominee on behalf of such person, and also a member of a nonstock corporation as reflected on the records of the nonstock corporation; (2) “list of stockholders” includes lists of members in a nonstock corporation; (3) “under oath” includes statements the declarant affirms to be true under penalty of perjury under the laws of the United States or any state; (4) “subsidiary” means any entity directly or indirectly owned, in whole or in part, by the corporation of which the stockholder is a stockholder and over the affairs of which the corporation directly or indirectly exercises control, and includes, without limitation, corporations, partnerships, limited partnerships, limited liability partnerships, limited liability companies, statutory trusts and/or joint ventures.

(b) Any stockholder, in person or by attorney or other agent, upon written demand under oath stating the purpose thereof, shall have the right during the usual hours for business to inspect for any proper purpose ~~the corporation’s bylaws, stock register, a list of its stockholders, books of account, records of the proceedings of the stockholders and directors and the corporation’s other books and records, and to make copies or extracts therefrom, and to make copies and extracts from:~~ (1) the corporation’s stock ledger, a list of its stockholders, and its other books and records; and (2) a subsidiary’s books and records, to the extent that (i) the corporation has actual possession and control of such records of such subsidiary; or (ii) the corporation could obtain such records through the exercise of control over such subsidiary, provided that as of the date of the making of the demand (A) stockholder inspection of such books and records of the subsidiary would not constitute a breach of an agreement between the corporation or the subsidiary and a person or persons not affiliated with the corporation, and (B) the subsidiary would not have the right under the law applicable to it to deny the corporation access to such books and records upon demand by the corporation. In every instance where the stockholder is other than a record holder of stock in a stock corporation or a member of a nonstock corporation, the demand under oath shall state the person’s status as a stockholder, be accompanied by documentary evidence of beneficial ownership of the stock and state that such documentary evidence is a true and correct copy of what it purports to be. A proper purpose shall mean a purpose reasonably related to such person’s interest as a stockholder. In every instance where an attorney or other agent shall be the person who seeks the right ~~of~~ inspection, the demand under oath shall be accompanied by a power of attorney or such other writing which authorizes the attorney or other agent to so act on behalf of the stockholder. The demand under oath shall be directed to the corporation at its registered office in this state or at its principal place of business.

(c) If the corporation, or an officer or agent thereof, refuses to permit an inspection sought by a stockholder or attorney or other agent acting for the stockholder pursuant to subsection (b) or does not reply to the demand within five business days after the demand has been made, the stockholder may apply to the district court for an order to compel such inspection. The district court is hereby vested with exclusive jurisdiction to determine whether or not the person seeking inspection is entitled to the inspection sought. The court may summarily order the corporation to permit the stockholder to inspect ~~any such records or instruments~~ the corporation’s stock ledger, an existing list of stockholders, and its other books and records, and to make copies or extracts therefrom; or the court may order the corporation to furnish to the stockholder a list of its stockholders as of a specific date on condition that the stockholder first pay to the corporation the reasonable cost of obtaining and furnishing such list and on such other conditions as the court deems appropriate. Where the stockholder seeks to inspect the corporation’s books and records, other than its stock ledger or list of stockholders, such stockholder shall first establish ~~(1)~~ that: (1) he, she or it is a stockholder; (2) such stockholder has complied with the provisions of this section respecting the form and manner of making demand for inspection of such documents; and ~~(2) that~~

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

(d) Any director, *including a member of the governing body of a non-stock corporation*, shall have the right to examine the corporation's stock ledger, a list of its stockholders and its other books and records for a purpose reasonably related to ~~such the~~ director's position as a director. The district court is hereby vested with the exclusive jurisdiction to determine whether a director is entitled to the inspection sought. The court may summarily order the corporation to permit the director to inspect any and all books and records, the stock ledger and the ~~stock list of stockholders~~ and to make copies or extracts therefrom. *The burden of proof shall be upon the corporation to establish that the inspection such director seeks is for an improper purpose.* The court may, in its discretion, prescribe any limitations or conditions with reference to the inspection, or award such other and further relief as the court may deem just and proper.

Sec. 36. K.S.A. 17-6511 is hereby amended to read as follows: 17-6511. In its articles of incorporation, every corporation may confer upon the holders of any bonds, debentures or other obligations issued or to be issued by the corporation the power to vote in respect to the corporate affairs and management of the corporation to the extent and in the manner provided in the articles of incorporation, and ~~it~~ may confer upon such holders of bonds, debentures or other obligations the same right of inspection of its books, accounts and other records, and also any other rights, which the stockholders of the corporation have or may have by reason of ~~the provisions of~~ this act or of its articles of incorporation. If the articles of incorporation so provide such holders of bonds, debentures or other obligations shall be deemed to be stockholders, and their bonds, debentures or other obligations shall be deemed to be shares of stock, for the purpose of any provision of this ~~chapter~~ *act* which requires the vote of stockholders as a prerequisite to any corporate action and the articles of incorporation may divest the holders of capital stock, in whole or in part, of their right to vote on any corporate matter whatsoever, except as set forth in K.S.A. 17-6602 and amendments thereto.

Sec. 37. K.S.A. 17-6512 is hereby amended to read as follows: 17-6512. (a) Whenever stockholders are required or permitted to take any action at a meeting, a written notice of the meeting shall be given which shall state the place, *if any*, date and hour of the meeting, *the means of remote communication, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such meeting*, and, in the case of a special meeting, the purpose or purposes for which the meeting is called.

(b) Unless otherwise provided in this act, the written notice of any meeting shall be given not less than 10 nor more than 60 days before the date of the meeting to each stockholder entitled to vote at such meeting. If mailed, notice is given when deposited in the United States mail, postage prepaid, directed to the stockholder at ~~his~~ *such stockholder's* address as it appears on the records of the corporation. An affidavit of the secretary or an assistant secretary or of the transfer agent *or other agent* of the corporation that the notice has been given shall be prima facie evidence of the facts stated therein in the absence of fraud.

(c) When a meeting is adjourned to another time or place, unless the bylaws otherwise require, notice need not be given of the adjourned meeting if the time ~~and place thereof~~, *place, if any, thereof, and the means of remote communication, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such adjourned meeting* are announced at the meeting at which the adjournment is taken. At the adjourned meeting the corporation may transact any business which might have been transacted at the original meeting. If the adjournment

is for more than 30 days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

Sec. 38. K.S.A. 17-6513 is hereby amended to read as follows: 17-6513. (a) Unless otherwise provided in the articles of incorporation or bylaws: (1) Vacancies and newly created directorships resulting from any increase in the authorized number of directors elected by all of the stockholders having the right to vote as a single class may be filled by a majority of the directors then in office, although less than a quorum, or by a sole remaining director or; (2) whenever the holders of any class or classes of stock or series thereof are entitled to elect one or more directors by the articles of incorporation, vacancies and newly created directorships of such class or classes or series may be filled by a majority of the directors elected by such class or classes or series thereof then in office, or by a sole remaining director so elected.

If, at any time, by reason of death or resignation or other cause, a corporation should have no directors in office, then any *receiver*, officer or any stockholder or an executor, administrator, trustee or guardian of a stockholder, or other fiduciary entrusted with like responsibility for the person or estate of a stockholder, may call a special meeting of stockholders in accordance with the provisions of the articles of incorporation or the bylaws, or may apply to the district court for a decree summarily ordering an election as provided in K.S.A. 17-6501, and amendments thereto.

If, at any time, in a corporation where the holders of any class or classes of stock or series thereof are entitled by the articles of incorporation to elect one or more directors, there is no director in office elected by the holders of any such class or series of stock, by reason of death or resignation or other cause, then any *receiver*, officer or any stockholder of such class or series, as the case may be, or an executor, administrator, trustee or guardian of any such stockholder, or other fiduciary entrusted with like responsibility for the person or estate of any such stockholder, may call a special meeting of stockholders of such class or series, in accordance with the provisions of the articles of incorporation or bylaws for calling a special meeting of stockholders, or may apply to the district court for a decree summarily ordering an election, as provided in K.S.A. 17-6501, and amendments thereto.

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

(c) If, at the time of filling any vacancy or any newly created directorship, the directors then in office shall constitute less than a majority of the whole board, as constituted immediately prior to any such increase, the district court, upon application of any stockholder or stockholders holding at least 10% of the total number of the shares at the time outstanding having the right to vote for such directors, may summarily order an election to be held to fill any such vacancies or newly created directorships, or to replace the directors chosen by the directors then in office as aforesaid, which election shall be governed by the provisions of K.S.A. 17-6501, and amendments thereto, as far as applicable.

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

Sec. 39. K.S.A. 17-6514 is hereby amended to read as follows: 17-6514. Any records maintained by a corporation in the regular course of its business, including its stock ledger, books of account and minute books, may be kept on, *or by means of*, or be in the form of, ~~punch cards, magnetic tape, photographs, microphotographs or any other information storage device, if the reports~~ *or method provided that the records* so kept can be converted into clearly legible ~~written~~ *written paper* form within a reasonable time. Any corporation shall so convert any records so kept upon the request of any person entitled to inspect the same. ~~Where~~ *When* records are kept in such manner, a clearly legible ~~written~~ *written paper* form produced

from the cards, tapes, photographs, microphotographs or other or by the means of the information storage device or method shall be admissible in evidence and shall be accepted for all other purposes, to the same extent as an original ~~written paper~~ record of the same information would have been, ~~when said written~~ provided the paper form accurately portrays the record.

Sec. 40. K.S.A. 17-6515 is hereby amended to read as follows: 17-6515. (a) Upon application of any stockholder or director, or any officer whose title to office is contested, or any member of a corporation without capital stock, the district court may hear and determine the validity of any election, *appointment, removal or resignation* of any director, member of the governing body, or officer of any corporation, and the right of any person to hold or *continue to hold* such office, and, in case any such office is claimed by more than one person, may determine the person entitled thereto. In making such determination, the court may make such order or decree in any such case as may be just and proper, with power to enforce the production of any books, papers and records of the corporation relating to the issue. In case it should be determined that no valid election has been held, the court may order an election to be held in accordance with K.S.A. 17-6501 or 17-6505, and amendments thereto. In any such application, service of copies of the application upon the resident agent of the corporation shall be deemed to be service upon the corporation and upon the person whose title to office is contested and upon the person, if any, claiming such office; and the resident agent shall forward immediately a copy of the application to the corporation and to the person whose title to office is contested and to the person, if any, claiming such office, in a postpaid, sealed, registered letter addressed to such corporation and such person at their post-office addresses last known to the resident agent or furnished to the resident agent by the applicant stockholder. The court may make such order respecting further or other notice of such application as it deems proper under the circumstances.

(b) Upon application of any stockholder or any member of a corporation without capital stock, the district court may hear and determine the result of any vote of stockholders or members, as the case may be, upon matters other than the election of directors, officers or members of the governing body. Service of the application upon the resident agent of the corporation shall be deemed to be service upon the corporation, and no other party need be joined in order for the court to adjudicate the result of the vote. The court may make such order respecting notice of the application as it deems proper under the circumstances.

Sec. 41. K.S.A. 17-6517 is hereby amended to read as follows: 17-6517. (a) The district court, in any proceeding instituted under K.S.A. 17-6501, 17-6505 or 17-6515, *and amendments thereto*, may determine the right and power of persons claiming to own stock, or in the case of a corporation without capital stock, of the persons claiming to be members, to vote at any meeting of the stockholders or members.

(b) The court may appoint a master to hold any election provided for in K.S.A. 17-6501, 17-6505 or 17-6515, *and amendments thereto*, under such orders and powers as it deems proper; and it may punish any officer or director for contempt in case of disobedience of any order made by the court; and, in case of disobedience by a corporation of any order made by the court, may enter a decree against such corporation for a penalty of not more than ~~five thousand dollars (\$5,000)~~ \$25,000.

Sec. 42. K.S.A. 17-6518 is hereby amended to read as follows: 17-6518. (a) Unless otherwise provided in the articles of incorporation, any action required by this act to be taken at any annual or special meeting of stockholders of a corporation, or any action which may be taken at any annual or special meeting of such stockholders, may be taken without a meeting, without prior notice and without a vote, if a consent or *consents* in writing, setting forth the action so taken, ~~shall be~~ *are* signed by all the holders of outstanding stock entitled to vote ~~thereon~~. *Such consent or consents shall be delivered to the corporation by delivery to its registered office in this state, its principal place of business or an officer or agent of the corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery shall be by return receipt delivery as defined in K.S.A. 60-303, and amendments thereto, or by hand.*

(b) *Unless otherwise provided in the articles of incorporation, any action required by this act to be taken at a meeting of the members of a nonstock corporation, or any action which may be taken at any meeting*

of the members of a nonstock corporation, may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, are signed by members having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all members having a right to vote were present and voted and shall be delivered to the corporation by delivery to its registered office in this state, its principal place of business or an officer or agent of the corporation having custody of the book in which proceedings of meetings of members are recorded. Delivery shall be by return receipt delivery as defined in K.S.A. 60-303, and amendments thereto, or by hand.

(c) Every written consent shall bear the date of signature of each stockholder or member who signs the consent or consents, and no written consent shall be effective to take the corporate action referred to in the consent or consents unless, within 60 days of the earliest dated consent delivered in the manner required by this section to the corporation, written consent signed by a sufficient number of holders or members to take action are delivered to the corporation by delivery to its registered office in this state, its principal place of business or an officer or agent of the corporation having custody of the book in which proceedings of meetings of stockholders or members are recorded. Delivery shall be by return receipt delivery as defined in K.S.A. 60-303, and amendments thereto, or by hand.

(d) (1) A telegram, cablegram or other electronic transmission consenting to an action to be taken and transmitted by a stockholder, member or proxy holder, or by a person or persons authorized to act for a stockholder, member or proxy holder, shall be deemed to be written, signed and dated for the purposes of this section, provided that any such telegram, cablegram or other electronic transmission sets forth or is delivered with information from which the corporation can determine: (A) That the telegram, cablegram or other electronic transmission was transmitted by the stockholder, member or proxy holder or by a person or persons authorized to act for the stockholder, member or proxy holder; and (B) the date on which such stockholder, member or proxy holder or authorized person or persons transmitted such telegram, cablegram or electronic transmission. The date on which such telegram, cablegram or electronic transmission is transmitted shall be deemed to be the date on which such consent or consents were signed. No consent or consents given by telegram, cablegram or other electronic transmission shall be deemed to have been delivered until such consent or consents are reproduced in paper form and until such paper form shall be delivered to the corporation by delivery to its registered office in this state, its principal place of business or an officer or agent of the corporation having custody of the book in which proceedings of meetings of stockholders or members are recorded. Delivery shall be made by return receipt delivery as defined in K.S.A. 60-303, and amendments thereto, or by hand. Notwithstanding the foregoing limitations on delivery, any consent or consents given by telegram, cablegram or other electronic transmission, may be otherwise delivered to the principal place of business of the corporation or to an officer or agent of the corporation having custody of the book in which proceedings of meetings of stockholders are recorded if, to the extent and in the manner provided by resolution of the board of directors or governing body of the corporation.

(2) Any copy, facsimile or other reliable reproduction of a consent or consents in writing may be substituted or used in lieu of the original writing for any and all purposes for which the original writing could be used, provided that such copy, facsimile or other reproduction shall be a complete reproduction of the entire original writing.

(e) Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those members who have not consented in writing and who, if the action had been taken at a meeting, would have been entitled to notice of the meeting if the record date for such meeting had been the date that a written consent or consents signed by a sufficient number of holders or members to take the action were delivered to the corporation as provided in subsection (c). In the event that the action which is consented to is such as would have required the filing of a certificate under any other section of this code act, if such action had been voted upon on by stockholders or by members at a meeting thereof, the certificate filed under such other section shall

state, in lieu of any statement required by such section concerning a *any* vote of stockholders *or members*, that written consent has been given in accordance with the provisions of this section.

Sec. 43. K.S.A. 17-6519 is hereby amended to read as follows: 17-6519. Whenever notice is required to be given under any provision of this act or ~~of~~ the articles of incorporation or bylaws, a written waiver ~~thereof~~, signed by the person entitled to notice, *or a waiver by electronic transmission by the person entitled to notice*, whether before or after the time stated therein shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the stockholders, directors or members of a committee of directors need be specified in any written waiver of notice *or any waiver by electronic transmission* unless so required by the articles of incorporation or the bylaws.

Sec. 44. K.S.A. 17-6520 is hereby amended to read as follows: 17-6520. (a) Whenever notice is required to be given, under any provision of this act or of the articles of incorporation or bylaws of any corporation, to any person with whom communication is unlawful, the giving of such notice to such person shall not be required and there shall be no duty to apply to any governmental authority or agency for a license or permit to give such notice to such person. Any action or meeting which shall be taken or held without notice to any such person with whom communication is unlawful shall have the same force and effect as if such notice had been duly given. In the event that the action taken by the corporation is such as to require the filing of a certificate under any of the other sections of this act, the certificate shall state, if such is the fact and if notice is required, that notice was given to all persons entitled to receive notice except such persons with whom communication is unlawful.

(b) Whenever notice is required to be given, under any provision of this act or the articles of incorporation or bylaws of any corporation, to any stockholder or, if the corporation is a nonstock corporation, to any member, to whom (1) notice of two consecutive annual meetings, and all notices of meetings or of the taking of action by written consent without a meeting to such person during the period between such two consecutive annual meetings, or (2) all, and at least two payments, if sent by first class mail, of dividends or interest on securities during a 12-month period, have been mailed addressed to such person at ~~the~~ *such person's* address as shown on the records of the corporation and have been returned undeliverable, the giving of such notice to such person shall not be required. Any action or meeting which shall be taken or held without notice to such person shall have the same force and effect as if such notice had been duly given. If any such person shall deliver to the corporation a written notice setting forth ~~the~~ *such person's* then current address, the requirement that notice be given to such person shall be reinstated. In the event that the action taken by the corporation is such as to require the filing of a certificate under any of the other sections of this chapter, the certificate need not state that notice was not given to persons to whom notice was not required to be given pursuant to this subsection.

(c) *The exception in subsection (b)(1) to the requirement that notice be given shall not be applicable to any notice returned as undeliverable if the notice was given by electronic transmission.*

New Sec. 45. (a) In advance of any meeting of stockholders, the corporation shall appoint one or more inspectors to act at the meeting and make a written report thereof. The corporation may designate one or more persons as alternate inspectors to replace any inspector who fails to act. If no inspector or alternate is able to act at a meeting of stockholders, the person presiding at the meeting shall appoint one or more inspectors to act at the meeting. Before entering upon the discharge of the duties of inspector, each inspector shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of such inspector's ability.

(b) The inspectors shall:

- (1) Ascertain the number of shares outstanding and the voting power of each;
- (2) determine the shares represented at a meeting and the validity of

proxies and ballots;

(3) count all votes and ballots;

(4) determine and retain for a reasonable period a record of the disposition of any challenges made to any determination by the inspectors; and

(5) certify their determination of the number of shares represented at the meeting, and their count of all votes and ballots. The inspectors may appoint or retain other persons or entities to assist the inspectors in the performance of the duties of the inspectors.

(c) The date and time of the opening and the closing of the polls for each matter upon which the stockholders will vote at a meeting shall be announced at the meeting. No ballot, proxies or votes, nor any revocations thereof or changes thereto, shall be accepted by the inspectors after the closing of the polls unless the district court upon application by a stockholder determines otherwise.

(d) In determining the validity and counting of proxies and ballots, the inspectors shall be limited to an examination of the proxies, any envelopes submitted with those proxies, any information provided in accordance with subsection (f) of K.S.A. 17-6501 or subsection (c)(2) of 17-6502, and amendments thereto, or any information provided pursuant to subsection (a)(2)(B)(i) or (iii) of K.S.A. 17-6501, and amendments thereto, ballots and the regular books and records of the corporation, except that the inspectors may consider other reliable information for the limited purpose of reconciling proxies and ballots submitted by or on behalf of banks, brokers, their nominees or similar persons which represent more votes than the holder of a proxy is authorized by the record owner to cast or more votes than the stockholder holds of record. If the inspectors consider other reliable information for the limited purpose permitted herein, the inspectors at the time they make their certification pursuant to subsection (b)(5) shall specify the precise information considered by them including the person or persons from whom they obtained the information, when the information was obtained, the means by which the information was obtained and the basis for the inspectors' belief that such information is accurate and reliable.

(e) Unless otherwise provided in the articles of incorporation or bylaws, this section shall not apply to a corporation that does not have a class of voting stock that is:

(1) Listed on a national securities exchange;

(2) authorized for quotation on an interdealer quotation system of a registered national securities association; or

(3) held of record by more than 2,000 stockholders.

(f) This section shall be part of and supplemental to the Kansas general corporation code, and amendments thereto.

New Sec. 46. (a) Without limiting the manner by which notice otherwise may be given effectively to stockholders, any notice to stockholders given by the corporation under any provisions of this act, the articles of incorporation, or the bylaws shall be effective if given by a form of electronic transmission consented to by the stockholders to whom the notice is given. Any such consent shall be revocable by the stockholder by written notice to the corporation. Any such consent shall be deemed revoked if: (1) The corporation is unable to deliver by electronic transmission two consecutive notices given by the corporation in accordance with such consent; and (2) such inability becomes known to the secretary or an assistant secretary of the corporation or to the transfer agent, or other person responsible for the giving of notice. The inadvertent failure to treat such inability as a revocation shall not invalidate any meeting or other action.

(b) Notice given pursuant to subsection (a) shall be deemed given:

(1) If by facsimile telecommunication, when directed to a number at which the stockholder has consented to receive notice; (2) if by electronic mail, when directed to an electronic mail address at which the stockholder has consented to receive notice; (3) if by a posting on an electronic network together with separate notice to the stockholder of such specific posting, upon the later of (A) such posting and (B) the giving of such separate notice; and (4) if by any other form of electronic transmission, when directed to the stockholder. An affidavit of the secretary or an assistant secretary or of the transfer agent or other agent of the corporation that the notice has been given by a form of electronic transmission, in the absence of fraud, shall be prima facie evidence of the facts stated therein.



(c) For purposes of this act, “electronic transmission” means any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process.

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

(e) This section shall not apply to K.S.A. 17-6414, 17-6906, 17-7001 or 17-7002, and amendments thereto.

(f) This section shall be a part of and supplemental to the Kansas general corporation code, and amendments thereto.

Sec. 47. K.S.A. 17-6604 is hereby amended to read as follows: 17-6604. (a) A corporation, by resolution of its board of directors, may reduce its capital in any of the following ways by:

(1) Reducing or eliminating the capital represented by shares of capital stock which have been retired;

(2) applying to an otherwise authorized purchase or redemption of outstanding shares of its capital stock some or all of the capital represented by the shares being purchased or redeemed, or any capital that has not been allocated to any particular class of its capital stock;

(3) *applying to an otherwise authorized conversion or exchange of outstanding shares of its capital stock some or all of the capital represented by the shares being converted or exchanged, or some or all of any capital that has not been allocated to any particular class of its capital stock, or both, to the extent that such capital in the aggregate exceeds the total aggregate par value or the stated capital of any previously unissued shares issuable upon such conversion or exchange; or*

(4) transferring to surplus: (A) Some or all of the capital not represented by any particular class of its capital stock; (B) some or all of the capital represented by issued shares of its par value capital stock, which capital is in excess of the aggregate par value of such shares; or (C) some of the capital represented by issued shares of its capital stock without par value.

(b) Notwithstanding the other provisions of this section, no reduction of capital shall be made or effected unless the assets of the corporation remaining after such reduction shall be sufficient to pay any debts of the corporation for which payment has not been otherwise provided. No reduction of capital shall release any liability of any stockholder whose shares have not been fully paid.

Sec. 48. K.S.A. 2003 Supp. 17-6605 is hereby amended to read as follows: 17-6605. (a) Whenever it is desired, a corporation may integrate into a single instrument all of the provisions of its articles of incorporation which are then in effect and operative as a result of there having been filed with the secretary of state one or more certificates or other instruments pursuant to any of the sections referred to in K.S.A. 17-6004, and amendments thereto. Such corporation may at the same time also further amend its articles of incorporation by adopting a restated articles of incorporation.

(b) If the restated articles of incorporation merely restate and integrate but do not further amend the articles of incorporation, as theretofore amended or supplemented by any instrument that was filed pursuant to any of the sections mentioned in K.S.A. 17-6004, and amendments thereto, such restated articles may be adopted by the board of directors without a vote of the stockholders, or they may be proposed by the directors and submitted by them to the stockholders for adoption, in which case the procedure and vote required by K.S.A. 17-6602, and amendments thereto, for amendment of the articles of incorporation shall be applicable. If the restated articles of incorporation restate and integrate and also further amend in any respect the articles of incorporation, as theretofore amended or supplemented, they shall be proposed by the directors and adopted by the stockholders in the manner and by the vote prescribed by K.S.A. 17-6602, and amendments thereto, or, if the corporation has not received any payment for any of its stock, in the manner and by the vote prescribed by K.S.A. 17-6601, and amendments thereto.

(c) Any restated articles of incorporation shall be specifically designated as such in its heading. They shall state, either in the heading or in an introductory paragraph, the corporation’s present name, and, if it has

been changed, the name under which it was originally incorporated, and the date of filing of its original articles of incorporation with the secretary of state. Any restated articles shall also state that they were duly adopted by the directors or stockholders, as the case may be, in accordance with the provisions of this section. If they were adopted by the board of directors without a vote of the stockholders unless it was adopted pursuant to the provisions of K.S.A. 17-6601, and amendments thereto, they shall state that they only restate and integrate and do not further amend the provisions of the corporation's articles of incorporation as theretofore amended or supplemented, and that there is no discrepancy between those provisions and the provisions of the restated articles. A restated articles of incorporation may omit: (1) Such provisions of the original articles of incorporation which named the incorporator or incorporators, the initial board of directors, and the original subscribers for shares; and (2) such provisions contained in any amendment to the articles of incorporation as were necessary to effect a change, exchange, reclassification, *subdivision, combination* or cancellation of stock if such change, exchange, reclassification, *subdivision, combination* or cancellation has become effective. Any such omissions shall not be deemed a further amendment.

(d) Any restated articles of incorporation shall be executed and filed in accordance with K.S.A. 17-6003, and amendments thereto. Upon filing with the secretary of state, the corporation's original articles of incorporation, as theretofore amended or supplemented, shall be superseded; and thenceforth the restated articles, including any further amendments or changes made thereby, shall be the articles of incorporation of the corporation, but the original date of incorporation shall remain unchanged.

(e) Any amendment or change effected in connection with the restatement and integration of the articles of incorporation shall be subject to any other provisions of this act, not inconsistent with this section, which would apply if a separate certificate of amendment were filed to effect such amendment or change.

Sec. 49. K.S.A. 2003 Supp. 17-6701 is hereby amended to read as follows: 17-6701. (a) Any two or more corporations existing under the laws of this state and authorized to issue capital stock may merge into a single corporation, which may be any one of the constituent corporations or they may consolidate into a new corporation formed by the consolidation, pursuant to an agreement of merger or consolidation, as the case may be, complying and approved in accordance with this section.

(b) The board of directors of each corporation which desires to merge or consolidate shall adopt a resolution approving an agreement of merger or consolidation. The agreement shall state: (1) The terms and conditions of the merger or consolidation; (2) the mode of carrying the same into effect; (3) in the case of a merger, such amendments or changes in the articles of incorporation of the surviving corporation as are desired to be effected by the merger or, if no such amendments or changes are desired, a statement that the articles of incorporation of the surviving corporation shall be its articles of incorporation; (4) in the case of consolidation, that the articles of incorporation of the resulting corporation shall be as is set forth in an attachment to the agreement; (5) the manner, *if any*, of converting the shares of each of the constituent corporations into shares or other securities of the corporation surviving or resulting from the merger or consolidation, *or of cancelling some or all of such shares* and, if any shares of any of the constituent corporations are not *to remain outstanding*, to be converted solely into shares or other securities of the surviving or resulting corporation *or to be cancelled*, the cash, property, rights or securities of any other corporation *or entity* which the holders of such shares are to receive in exchange for, or upon conversion of, such shares and the surrender of ~~the any~~ *certificates evidencing* ~~certificated shares~~ *them*, which cash, property, rights or securities of any other corporation *or entity* may be in addition to or in lieu of shares or other securities of the surviving or resulting corporation; and (6) such other details or provisions as are deemed desirable, including, without limiting, the generality of the foregoing, a provision for the payment of cash in lieu of the issuance or recognition of fractional shares, interests or rights, or for any other arrangement with respect thereto, consistent with the provisions of K.S.A. 17-6405, and amendments thereto. The agreement adopted as provided in this subsection shall be executed in accordance with K.S.A. 17-6003,

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

(c) (1) The agreement required by subsection (b) shall be submitted to the stockholders of each constituent corporation at an annual or special meeting thereof for the purpose of acting on the agreement.

(2) *The terms of the agreement may require that the agreement be submitted to the stockholders whether or not the board of directors determines at any time subsequent to declaring its advisability that the agreement is no longer advisable and recommends that the stockholders reject it.*

(3) Due notice of the time, place and purpose of the meeting shall be mailed to each holder of stock of the corporation, whether voting or nonvoting, at the stockholder's address as it appears on the records of the corporation, at least 20 days prior to the date of the meeting. *The notice shall contain a copy of the agreement or a brief summary thereof, as the directors deem advisable.*

(4) At the meeting the agreement shall be considered and a vote taken for its adoption or rejection. If a majority of the outstanding stock of the corporation entitled to vote thereon shall be voted for the adoption of the agreement, that fact shall be certified on the agreement by the secretary or assistant secretary of the corporation. If the agreement is adopted and certified by each constituent corporation, it shall then be executed and filed, and shall become effective, in accordance with K.S.A. 17-6003, and amendments thereto.

(5) In lieu of filing the agreement of merger or consolidation, the surviving or resulting corporation may file a certificate of merger or consolidation, executed in accordance with K.S.A. 17-6003, and amendments thereto, which states: ~~(1)~~ (A) The name and state of incorporation of each of the constituent corporations; ~~(2)~~ (B) that an agreement of merger or consolidation has been approved, adopted, certified and executed by each of the constituent corporations in accordance with this section; ~~(3)~~ (C) the name of the surviving or resulting corporation; ~~(4)~~ (D) in the case of a merger, such amendments or changes in the articles of incorporation of the surviving corporation as are desired to be effected by the merger or, if no such ~~changes or amendments or changes~~ are desired, a statement that the articles of incorporation of one of the ~~surviving~~ *surviving constituent* corporations shall be the articles of incorporation *of the surviving corporation*; ~~(5)~~ (E) in the case of a consolidation, that the articles of incorporation of the resulting corporation shall be as is set forth in an attachment to the certificate; ~~(6)~~ (F) that the executed agreement of consolidation or merger is on file at the principal place of business of the surviving or resulting corporation, stating the address thereof; and ~~(7)~~ (G) that a copy of the agreement of consolidation or merger will be furnished by the surviving or resulting corporation, on request and without cost, to any stockholder of any constituent corporation.

(d) Any agreement of merger or consolidation may contain a provision that at any time prior to the ~~filing of time that~~ the agreement, or certificate in lieu thereof, *filed* with the secretary of state *becomes effective in accordance with K.S.A. 17-6003, and amendments thereto*, the agreement may be terminated by the board of directors of any constituent corporation notwithstanding approval of the agreement by the stockholders of all or any of the constituent corporations; *in the event the agreement of merger or consolidation is terminated after the filing of the agreement, or a certificate, with the secretary of state but before the agreement, or certificate, has become effective, a certificate of termination of merger or consolidation shall be filed in accordance with K.S.A. 17-6003, and amendments thereto.* Any agreement of merger or consolidation may contain a provision that the boards of directors of the constituent corporations may amend the agreement at any time prior to the filing of the agreement, or a certificate in lieu thereof, with the secretary of state, except that an amendment made subsequent to the adoption of the agreement by the stockholders of any constituent corporation shall not: (1) Alter or change the amount or kind of shares, securities, cash, property or rights, or any

~~of the proceedings combination, to be received~~ in exchange for or on conversion of all or any of the shares of any class or series thereof of such constituent corporation; (2) alter or change any term of the articles of incorporation of the surviving or resulting corporation to be effected by the merger or consolidation; or (3) alter or change any of the terms and conditions of the agreement if such alteration or change would adversely affect the holders of any class or series thereof of such constituent corporation. *In the event the agreement of merger or consolidation is amended after the filing of such merger or consolidation with the secretary of state but before the agreement has become effective, a certificate of amendments of merger or consolidation shall be filed in accordance with K.S.A. 17-6003, and amendments thereto.*

(e) In the case of a merger, the articles of incorporation of the surviving corporation shall automatically be amended to the extent, if any, that changes in the articles of incorporation are set forth in the agreement of merger.

(f) (1) Notwithstanding the requirements of subsection (c), unless required by its articles of incorporation, no vote of stockholders of a constituent corporation surviving a merger shall be necessary to authorize a merger if: ~~(1)~~ (A) The agreement of merger does not amend in any respect the articles of incorporation of such constituent corporation; ~~(2)~~ (B) each share of stock of such constituent corporation outstanding immediately prior to the effective date of the merger is to be an identical outstanding or treasury share of the surviving corporation after the effective date of the merger; and ~~(3)~~ (C) either no shares of common stock of the surviving corporation and no shares, securities or obligations convertible into such stock are to be issued or delivered under the plan of merger, or the authorized unissued shares or the treasury shares of common stock of the surviving corporation to be issued or delivered under the plan of merger plus those initially issuable upon conversion of any other shares, securities or obligations to be issued or delivered under such plan do not exceed 20% of the shares of common stock of such constituent corporation outstanding immediately prior to the effective date of the merger.

(2) No vote of stockholders of a constituent corporation shall be necessary to authorize a merger or consolidation if no shares of the stock of such corporation shall have been issued prior to the adoption by the board of directors of the resolution approving the agreement of merger or consolidation. If an agreement of merger is adopted by the constituent corporation surviving the merger, by action of its board of directors and without any vote of its stockholders pursuant to this subsection, the secretary or assistant secretary of that corporation shall certify on the agreement that the agreement has been adopted pursuant to this subsection and: ~~(1)~~ (A) If it has been adopted pursuant to the first sentence of this subsection, that the conditions specified in that sentence have been satisfied, or ~~(2)~~ (B) if it has been adopted pursuant to the second sentence of this subsection, that no shares of stock of such corporation were issued prior to the adoption by the board of directors of the resolution approving the agreement of merger or consolidation.

(3) The agreement adopted and certified shall then be executed and filed, and shall become effective, in accordance with K.S.A. 17-6003, and amendments thereto. Such filing shall constitute a representation by the person who executes the agreement that the facts stated in the certificate remain true immediately prior to such filing.

~~(g) Notwithstanding the requirements of subsection (c) of this section,~~ unless expressly required by its articles of incorporation, no vote of stockholders of a constituent corporation shall be necessary to authorize a merger with or into a single direct or indirect wholly-owned subsidiary of such constituent corporation if:

(1) Such constituent corporation and the direct or indirect wholly-owned subsidiary of such constituent corporation are the only constituent ~~corporations~~ *entities* to the merger;

(2) each share or fraction of a share of the capital stock of the constituent corporation outstanding immediately prior to the effective time of the merger is converted in the merger into a share or equal fraction of share of capital stock of a holding company having the same designations, rights, powers and preferences, and the qualifications, limitations and restrictions thereof, as the share of stock of the constituent corporation being converted in the merger;

(3) the holding company and ~~each of~~ the constituent *corporations are*

corporations to the merger are corporations of this state and the direct or indirect wholly-owned subsidiary that is the other constituent entity to the merger is a corporation or limited liability company of this state;

(4) the articles of incorporation and bylaws of the holding company immediately following the effective time of the merger contain provisions identical to the articles of incorporation and bylaws of the constituent corporation immediately prior to the effective time of the merger, other than provisions, if any, regarding the incorporator or incorporators, the corporate name, the registered office and agent, the initial board of directors and the initial subscribers for shares and such provisions contained in any amendment to the articles of incorporation as were necessary to effect a change, exchange, reclassification, *subdivision, combination* or cancellation of stock, if such change, exchange, reclassification, *subdivision, combination* or cancellation has become effective;

(5) as a result of the merger the constituent corporation or its successor corporation becomes or remains a direct or indirect wholly-owned subsidiary of the holding company;

(6) the directors of the constituent corporation become or remain the directors of the holding company upon the effective time of the merger; and

(7) (A) the ~~articles of incorporation~~ *organizational documents* of the surviving ~~corporation~~ *entity* immediately following the effective time of the merger ~~are~~ *contain provisions* identical to the articles of incorporation of the constituent corporation immediately prior to the effective time of the merger, other than provisions, if any, regarding the incorporator or incorporators, the corporate *or entity* name, the registered office and agent, the initial board of directors and the initial subscribers for shares, *references to members rather than stockholders or shareholders, references to interests, units or the like rather than stock or shares, references to managers, managing members or other members of the governing body rather than directors* and such provisions contained in any amendment to the articles of incorporation as were necessary to effect a change, exchange, reclassification, *subdivision, combination* or cancellation of stock, if such change, exchange, reclassification, *subdivision, combination* or cancellation has become effective, ~~except that (i) the articles of incorporation of the surviving corporation.~~

(B) *If the organizational documents of the surviving entity do not contain the following provisions, such documents shall be amended in the merger to contain a provision provisions requiring that: (i) Any act or transaction by or involving the surviving entity, other than the election or removal of directors of the surviving corporation, or transaction by or involving the surviving corporation or managers, managing members or other members of the governing body of the surviving entity, that requires for its adoption under this article or its articles of incorporation act or its organizational documents the approval of the stockholders or members of the surviving corporation entity shall, by specific reference to this subsection, require, in addition, the approval of the stockholders of the holding company, or any successor by merger, by the same vote as is required by this article or by the articles of incorporation of the surviving corporation, or both, and (ii) the articles of incorporation of the surviving corporation may be amended in the merger to reduce the number of classes and shares of capital stock that the surviving corporation is authorized to issue, and (8) the stockholders of the constituent corporation do not recognize gain or loss for United States federal income tax purposes as determined by the board of directors of the constituent corporation. Neither subsection (g)(7)(i) nor any provision of a surviving corporation's articles of incorporation required by subsection (g)(7)(i) shall be deemed or construed to require approval of the stockholders of the holding company to elect or remove directors of the surviving corporation. act or by the organizational documents of the surviving entity, or both. For purposes of this clause, any surviving entity that is not a corporation shall include in such amendments a requirement that the approval of the stockholders of the holding company be obtained for any act or transaction by or involving the surviving entity, other than the election or removal of directors or managers, managing members or other members of the governing body of the surviving entity, which would require the approval of the stockholders of the surviving entity if the surviving entity were a corporation subject to this act;*

(ii) *any amendment of the organizational documents of a surviving*

entity that is not a corporation, which amendment would, if adopted by a corporation subject to this act, be required to be included in the articles of incorporation of such corporation, shall, by specific reference to this subsection, require, in addition, the approval of the stockholders of the holding company, or any successor by merger, by the same vote as is required by this act or by the organizational documents of the surviving entity or both; and

(iii) the business and affairs of a surviving entity that is not a corporation shall be managed by or under the direction of a board of directors, board of managers or other governing body consisting of individuals who are subject to the same fiduciary duties applicable to, and who are liable for breach of such duties to the same extent as, directors of a corporation subject to this act. Neither the provisions of this subsection nor any provision of a surviving entity's organizational documents required by this subsection shall be deemed or construed to require approval of the stockholders of the holding company to elect or remove directors or managers, managing members or other members of the governing body of the surviving entity.

(C) The organizational documents of the surviving entity may be amended in the merger to reduce the number of classes and shares of capital stock or other equity interests or units that the surviving entity is authorized to issue.

(D) As used in this subsection only, the term "organizational documents," when used in reference to a corporation, means the articles of incorporation of such corporation and, when used in reference to a limited liability company, means the articles of organization or operating agreement of such limited liability company; the term "holding company" means a corporation which, from its incorporation until consummation of a merger governed by this subsection, was at all times a direct or indirect wholly-owned subsidiary of the constituent corporation and whose capital stock is issued in such merger. From and after the effective time of a merger adopted by a constituent corporation by action of its board of directors and without any vote of stockholders pursuant to this subsection; ~~if the corporate name of the holding company immediately following:~~ (i) ~~To the extent the restriction of K.S.A. 17-12,100 et seq., and amendments thereto, applied to the constituent corporation and its stockholders the effective time of the merger is the same as the corporate name of the constituent corporation immediately prior to such restrictions shall apply to the holding company and its stockholders immediately after the effective time of the merger, the as though it were the constituent corporation, and all shares of capital stock of the holding company into which acquired in the merger shall for the purposes of K.S.A. 17-12,100 et seq., and amendments thereto, be deemed to have been acquired at the time that the shares of capital stock of the constituent corporation are converted in the merger shall be represented by the stock certificates that previously represented shares of capital stock of the constituent corporation. were acquired, and provided further that any stockholder who immediately prior to the effective time of the merger was not an interested stockholder within the meaning of K.S.A. 17-12,100 et seq., and amendments thereto, shall not solely by reason of the merger become an interested stockholder of the holding company; and (ii) if the corporate name of the holding company immediately following the effective time of the merger is the same as the corporate name of the constituent corporation immediately prior to the effective time of the merger, the shares of capital stock of the holding company into which the shares of capital stock of the constituent corporation are converted in the merger shall be represented by the stock certificates that previously represented shares of capital stock of the constituent corporation and to the extent a stockholder of the constituent corporation immediately prior to the merger had standing to institute or maintain derivative litigation on behalf of the constituent corporation, nothing in this section shall be deemed to limit or extinguish such standing.~~ If an agreement of merger is adopted by a constituent corporation by action of its board of directors and without any vote of stockholders pursuant to this subsection, the secretary or assistant secretary of the constituent corporation shall certify on the agreement or a certificate of merger that the agreement has been adopted pursuant to this subsection and that the conditions specified in the first sentence of this subsection have been satisfied. The agreement or certificate of merger so adopted and certified shall then be filed and become effective, in accordance with

K.S.A. 17-6003, and amendments thereto. Such filing shall constitute a representation by the person who executes the agreement or certificate of merger that the facts stated in the certificate remain true immediately prior to such filing.

Sec. 50. K.S.A. 2003 Supp. 17-6702 is hereby amended to read as follows: 17-6702. (a) Any one or more corporations of this state may merge or consolidate with one or more other stock corporations of any other state or states of the United States, or of the District of Columbia if the laws of such other jurisdiction permit a corporation of such jurisdiction to merge or consolidate with a corporation of another jurisdiction. The constituent corporations may merge into a single corporation, which may be any one of the constituent corporations, or they may consolidate into a new corporation formed by the consolidation, which may be a corporation of the state of incorporation of any one of the constituent corporations, pursuant to an agreement of merger or consolidation, as the case may be, complying and approved in accordance with this section. In addition, any one or more corporations organized under the laws of any jurisdiction other than one of the United States may merge or consolidate with one or more corporations existing under the laws of this state, ~~if the surviving or resulting corporation will be a corporation of this state, and~~ if the laws under which the other corporation or corporations are formed permit a corporation of such jurisdiction to merge or consolidate with a corporation of another jurisdiction.

(b) All the constituent corporations shall enter into an agreement of merger or consolidation. The agreement shall state: (1) The terms and conditions of the merger or consolidation; (2) the mode of carrying the same into effect; (3) the manner, *if any*, of converting the shares of each of the constituent corporations into shares or other securities of the corporation surviving or resulting from the merger or consolidation, *or of cancelling some or all of such shares*, and, if any shares of any of the constituent corporations are not *to remain outstanding*, to be converted solely into shares or other securities of the surviving or resulting corporation *or to be cancelled*, the cash, property, rights or securities of any other corporation *or entity* which the holders of such shares are to receive in exchange for, or upon conversion of, such shares and the surrender of ~~the any~~ certificates evidencing ~~certificated shares~~ *them*, which cash, property, rights or securities of any other corporation may be in addition to or in lieu of the shares or other securities of the surviving or resulting corporation; (4) such other details or provisions as are deemed desirable, including, without limiting the generality of the foregoing, a provision for the payment of cash in lieu of the issuance or recognition of fractional shares of the surviving or resulting corporation or of any other corporation the securities of which are to be received in the merger or consolidation, or for some other arrangement with respect thereto consistent with the provisions of K.S.A. 17-6405, and amendments thereto; and (5) such other provisions or facts as shall be required to be set forth in articles of incorporation by the laws of the state which are stated in the agreement to be the laws that shall govern the surviving or resulting corporation and that can be stated in the case of a merger or consolidation. Any of the terms of the agreement of merger or consolidation may be made dependent upon facts ascertainable outside of such agreement, provided that the manner in which such facts shall operate upon the terms of the agreement is clearly and expressly set forth in the agreement of merger or consolidation. *The term "facts," as used in the preceding sentence, includes, but is not limited to, the occurrence of any event, including a determination or action by any person or body, including the corporation.*

(c) The agreement shall be adopted, approved, certified and executed by each of the constituent corporations in accordance with the laws under which it is formed, and, in the case of a Kansas corporation, in the same manner as provided in K.S.A. 17-6701, and amendments thereto. The agreement shall be filed and shall become effective for all purposes of the laws of this state when and as provided in K.S.A. 17-6701, and amendments thereto, with respect to the merger or consolidation of corporations of this state. In lieu of filing the agreement of merger or consolidation, the surviving or resulting corporation may file a certificate of merger or consolidation, executed in accordance with K.S.A. 17-6003, and amendments thereto, which states: (1) The name and ~~state~~ *jurisdiction* of incorporation of each of the constituents; (2) that an agreement of merger or consolidation has been approved, adopted, certified and executed by

each of the constituent corporations in accordance with this section; (3) the name of the surviving or resulting corporation; (4) in the case of a merger, such amendments or changes in the articles of incorporation of the surviving corporation as are desired to be effected by the merger or, if no such amendments or changes are desired, a statement that the articles of incorporation of the surviving corporation shall be its articles of incorporation; (5) in the case of a consolidation, that the articles of incorporation of the resulting corporation shall be as is set forth in an attachment to the certificate; (6) that the executed agreement of consolidation or merger is on file at the principal place of business of the surviving or resulting corporation and the address thereof; (7) that a copy of the agreement of consolidation or merger will be furnished by the surviving or resulting corporation, on request and without cost, to any stockholder of any constituent corporation; (8) if the corporation surviving or resulting from the merger or consolidation is to be a corporation of this state, the authorized capital stock of each constituent corporation which is not a corporation of this state; and (9) the agreement, if any, required by subsection (d).

(d) If the corporation surviving or resulting from the merger or consolidation is to be governed by the laws of the District of Columbia or any state other than this state, it shall agree that it may be served with process in this state in any proceeding for enforcement of any obligation of any constituent corporation of this state, as well as for enforcement of any obligation of the surviving or resulting corporation arising from the merger or consolidation, including any suit or other proceeding to enforce the right of any stockholder as determined in appraisal proceedings pursuant to the provisions of K.S.A. 17-6712, and amendments thereto. Such corporation shall irrevocably appoint the secretary of state as its agent to accept service of process in any such suit or other proceedings and shall specify the address to which a copy of such process shall be mailed by the secretary of state. Service of such process shall be made by personally delivering to and leaving with the secretary of state duplicate copies of such process. The secretary of state shall forthwith send by registered mail one of such copies to such surviving or resulting corporation at its address so specified, unless such surviving or resulting corporation shall thereafter have designated in writing to the secretary of state a different address for such purpose, in which case it shall be mailed to the last address so designated.

(e) The provisions of subsection (d) of K.S.A. 17-6701, and amendments thereto, shall apply to any merger or consolidation under this section; the provisions of subsection (e) of K.S.A. 17-6701, and amendments thereto, shall apply to a merger under this section in which the surviving corporation is a corporation of this state; the provisions of subsection (f) of K.S.A. 17-6701, and amendments thereto, shall apply to any merger under this section.

Sec. 51. K.S.A. 2003 Supp. 17-6703 is hereby amended to read as follows: 17-6703. (a) In any case in which at least 90% of the outstanding shares of each class of the stock of a corporation or corporations is owned by another corporation and one of such 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 such other state or states, or the District of Columbia permit a corporation of such jurisdiction to merge with a corporation of another jurisdiction, the corporation having such stock ownership may either merge such other corporation or corporations into itself and assume all of its or their obligations, or merge itself, or itself and one or more of such other corporations, into one of such other corporations by executing and filing, in accordance with K.S.A. 17-6003, and amendments thereto, a certificate of such ownership and merger setting forth a copy of the resolution of its board of directors to so merge and the date of the adoption thereof, except that in case the parent corporation shall not own all the outstanding stock of all the subsidiary corporations, parties to a merger as provided in this section, the resolution of the board of directors of the parent corporation shall state the terms and conditions of the merger, including the securities, cash, property or rights to be issued, paid, delivered or granted by the surviving corporation upon surrender of each share of the subsidiary corporation or corporations not owned by the parent corporation, *or the cancellation of some or all of such shares. Any of the terms of the resolution of the board of directors to so merge may be made de-*



pendent upon facts ascertainable outside of such resolution, provided that the manner in which such facts shall operate upon the terms of the resolution is clearly and expressly set forth in the resolution. The term "facts," as used in the preceding sentence, includes, but is not limited to, the occurrence of any event, including a determination or action by any person or body, including the corporation. If the parent corporation is not the surviving corporation, the resolution shall include provision for the pro rata issuance of stock of the surviving corporation to the holders of the stock of the parent corporation on surrender of any certificates therefor, and the certificate of ownership and merger shall state that the proposed merger has been approved by a majority of the outstanding stock of the parent corporation entitled to vote thereon at a meeting thereof duly called and held after 20 days' notice of the purpose of the meeting mailed to each such stockholder at the stockholder's address as it appears on the records of the corporation, if the parent corporation is a corporation of this state, or the certificate shall state that the proposed merger has been adopted, approved, certified and executed by the parent corporation in accordance with the laws under which it is organized, if the parent corporation is not a corporation of this state. If the surviving corporation exists under the laws of the District of Columbia or any state other than this state, the provisions of subsection (d) of K.S.A. 17-6702, and amendments thereto, shall also apply to a merger under this section.

(b) If the surviving corporation is a Kansas corporation, it may change its corporate name by the inclusion of a provision to that effect in the resolution of merger adopted by the directors of the parent corporation and set forth in the certificate of ownership and merger, and upon the effective date of the merger, the name of the corporation shall be changed.

(c) The provisions of subsection (d) of K.S.A. 17-6701, and amendments thereto, shall apply to a merger under this section, and the provisions of subsection (e) of K.S.A. 17-6701, and amendments thereto, shall apply to a merger under this section in which the surviving corporation is the subsidiary corporation and is a corporation of this state. References to "agreement of merger" in subsections (d) and (e) of K.S.A. 17-6701, and amendments thereto, shall mean, for the purposes of this subsection (c), the resolution of merger adopted by the board of directors of the parent corporation. Any merger which effects any changes other than those authorized by this section or made applicable by this subsection shall be accomplished under the provisions of K.S.A. 17-6701 or 17-6702, and amendments thereto. The provisions of K.S.A. 17-6712, and amendments thereto, shall not apply to any merger effected under this section, except as provided in subsection (d).

(d) In the event all of the stock of a subsidiary Kansas corporation party to a merger effected under this section is not owned by the parent corporation immediately prior to the merger, the stockholders of the subsidiary Kansas corporation party to the merger shall have appraisal rights as set forth in K.S.A. 17-6712, and amendments thereto.

(e) A merger may be effected under this section although one or more of the corporations party to the merger is a corporation organized under the laws of a jurisdiction other than one of the United States, if: (1) The laws of such jurisdiction permit a corporation of such jurisdiction to merge with a corporation of another jurisdiction; and (2) the surviving corporation shall be a corporation of this state.

Sec. 52. K.S.A. 2003 Supp. 17-6704 is hereby amended to read as follows: 17-6704. (a) The term "joint-stock association," as used in this section, includes any association of the kind commonly known as joint-stock association or joint-stock company and any unincorporated association, trust or enterprise *having members or* having outstanding shares of stock or other evidences of financial or beneficial interest therein, whether formed by agreement or under statutory authority or otherwise, but does not include a corporation, *partnership or limited liability company*. The term "stockholder," as used in this section, includes every member of such joint-stock association or holder of a share of stock or other evidence of financial or beneficial interest therein.

(b) Any one or more corporations of this state may merge or consolidate with one or more joint-stock associations, except a joint-stock association formed under the laws of a state which forbids such merger or consolidation. Such corporation or corporations and such one or more joint-stock associations may merge into a single corporation or joint-stock

association, which may be any one of such corporations or joint-stock associations of this state *or they may consolidate into a new corporation or joint-stock association of this state*, pursuant to an agreement of merger or consolidation, as the case may be, complying and approved in accordance with this section. The surviving or resulting entity may be organized for profit or not organized for profit and, if the surviving or resulting entity is a corporation, it may be a stock corporation or a nonstock corporation.

(c) Each such corporation and joint-stock association shall enter into a written agreement of merger or consolidation. The agreement shall state: (1) The terms and conditions of the merger or consolidation; (2) the mode of carrying the same into effect; (3) the manner, *if any*, of converting the shares of stock of each stock corporation, the interests of members of each nonstock corporation, and the shares, memberships or financial or beneficial interests in each of the joint-stock associations into shares or other securities of a stock corporation or membership interests of a nonstock corporation or into shares, memberships, or financial or beneficial interests of the joint-stock association surviving or resulting from such merger or consolidation, *or of cancelling some or all of such shares, memberships or financial or beneficial interests*, and, if any shares of any such stock corporation, any membership interests of any such nonstock corporation, or any shares, memberships or financial or beneficial interests in any such joint-stock association are not *to remain outstanding*, to be converted solely into shares or other securities of the stock corporation or membership interest of the nonstock corporation or into shares, memberships, or financial or beneficial interests of the joint-stock association surviving or resulting from such merger or consolidation *or to be cancelled*, the cash, property, rights or securities of any other corporation or entity which the holders of shares of any such stock corporation, membership interests of any such nonstock corporation, or shares, memberships or financial or beneficial interests of any such joint-stock association are to receive in exchange for, or upon conversion of such shares, membership interest or shares, memberships or financial or beneficial interests, and the surrender of any certificates evidencing them, which cash, property, rights or securities of any other corporation or entity may be in addition to or in lieu of shares or other securities of the stock corporation or membership interests of the nonstock corporation or shares, memberships, or financial or beneficial interests of the joint-stock association surviving or resulting from such merger or consolidation; and (4) such other details or provisions as are deemed desirable, including, without limiting the generality of the foregoing, a provision for the payment of cash in lieu of the issuance of fractional shares where the surviving or resulting entity is a corporation. There shall also be set forth in the agreement such other matters or provisions as shall then be required to be set forth in articles of incorporation by the laws of this state and that can be stated in the case of such merger or consolidation. Any of the terms of the agreement of merger or consolidation may be made dependent upon facts ascertainable outside of such agreement, provided that the manner in which such facts shall operate upon the terms of the agreement is clearly and expressly set forth in the agreement of merger or consolidation. *The term "facts," as used in the preceding sentence, includes, but is not limited to, the occurrence of any event, including a determination or action by any person or body, including the corporation.*

(d) The agreement required by subsection (c) ~~of this section~~ shall be adopted, approved and executed by each of the corporations in the same manner as is provided in K.S.A. 17-6701, and amendments thereto, and in the case of the joint-stock associations in accordance with their articles of association or other instrument containing the provisions by which they are organized or regulated or in accordance with the laws of the state under which they are formed, as the case may be. Where the surviving or resulting entity is a corporation, the agreement shall be filed and shall become effective for all purposes of the laws of this state when and as provided in K.S.A. 17-6701, and amendments thereto, with respect to the merger or consolidation of corporations of this state. In lieu of filing the agreement of merger or consolidation, where the surviving or resulting entity is a corporation, it may file a certificate of merger or consolidation, executed in accordance with K.S.A. 17-6003, and amendments thereto, which states:

(1) The name and state of domicile of each of the constituent entities;

(2) that an agreement of merger or consolidation has been approved, adopted, certified and executed by each of the constituent entities in accordance with this subsection;

(3) the name of the surviving or resulting corporation;

(4) in the case of a merger, such amendments or changes in the articles of incorporation of the surviving corporation as are desired to be effected by the merger or, if no such amendments or changes are desired, a statement that the articles of incorporation of the surviving corporation shall be its articles of incorporation;

(5) in the case of a consolidation, that the articles of incorporation of the resulting corporation shall be as is set forth in an attachment to the certificate;

(6) that the executed agreement of consolidation or merger is on file at the principal place of business of the surviving corporation and the address thereof; and

(7) that a copy of the agreement of consolidation or merger will be furnished by the surviving corporation, on request and without cost, to any stockholder of any constituent entity.

Where the surviving or resulting entity is a joint-stock association, the agreement shall be filed and shall be effective for all purposes when filed in accordance with the laws regulating the creation of joint-stock associations.

(e) The provisions of subsections (d) and (e) of K.S.A. 17-6701, 17-6709 through 17-6712, and 17-7103, and amendments thereto, shall apply, insofar as they are applicable, to mergers or consolidations between corporations and joint-stock associations; and the word "corporation" where applicable, as used in those sections, shall be deemed to include joint-stock associations as defined in this section. *The second sentence of subsection (c) of K.S.A. 17-6701, and amendments thereto, shall be applicable to any merger or consolidation under this section. Where the surviving or resulting entity is a corporation, the personal liability, if any, of any stockholder of a joint-stock association existing at the time of such merger or consolidation shall not be extinguished by such merger or consolidation, shall remain personal to such stockholder and shall not become the liability of any subsequent transferee of any share of stock in such surviving or resulting corporation or of any other stockholder of such surviving or resulting corporation.*

(f) Nothing in this section shall be deemed to authorize the merger of a charitable nonstock corporation or charitable joint-stock association into a stock corporation or joint-stock association, if the charitable status of such nonstock corporation or joint-stock association would thereby be lost or impaired, but a stock corporation or joint-stock association may be merged into a charitable nonstock corporation or charitable joint-stock association which shall continue as the surviving corporation or joint-stock association.

(g) A merger of *an* armed forces cooperative insuring association into *an* armed forces insurance exchange, with *the* armed forces insurance exchange being the survivor in such merger, shall be a valid merger under the general corporation code of the state of Kansas upon a filing of the merger agreement with the secretary of state.

Sec. 53. K.S.A. 2003 Supp. 17-6705 is hereby amended to read as follows: 17-6705. (a) Any two or more nonstock corporations of this state, whether or not organized for profit, may merge into a single corporation, which may be any one of the constituent corporations, or they may consolidate into a new nonstock, ~~nonprofit~~ corporation, *whether or not organized for profit*, formed by the consolidation, pursuant to an agreement of merger or consolidation, as the case may be, complying and approved in accordance with this section.

(b) The governing body of each corporation which desires to merge or consolidate shall adopt a resolution approving an agreement of merger or consolidation. The agreement shall state: (1) The terms and conditions of the merger or consolidation; (2) the mode of carrying the same into effect; (3) such other provisions or facts required or permitted by this act to be stated in articles of incorporation for nonstock, ~~nonprofit~~ corporations as can be stated in the case of a merger or consolidation, stated in such altered form as the circumstances of the case require; (4) the manner, *if any*, of converting the memberships of each of the constituent corporations into memberships of the corporation surviving or resulting from the merger or consolidation, *or of cancelling some or all of such*

*memberships interests; and (5) such other details or provisions as are deemed desirable. Any of the terms of the agreement of merger or consolidation may be made dependent upon facts ascertainable outside of such agreement, provided that the manner in which such facts shall operate upon the terms of the agreement is clearly and expressly set forth in the agreement of merger or consolidation. The term "facts," as used in the preceding sentence, includes, but is not limited to, the occurrence of any event, including a determination or action by any person or body, including the corporation.*

(c) The agreement shall be submitted to the members of each constituent corporation who have the right to vote for the election of the members of the governing body of their corporation, at an annual or special meeting thereof for the purpose of acting on the agreement. Due notice of the time, place and purpose of the meeting shall be mailed to each member of each such corporation who has the right to vote for the election of the members of the governing body of such corporation, at the member's address as it appears on the records of the corporation, at least 20 days prior to the date of the meeting. The notice shall contain a copy of the agreement or a brief summary thereof, as the governing body shall deem advisable. At the meeting the agreement shall be considered and a vote by ballot, in person or by proxy, taken for the adoption or rejection of the agreement, each member who has the right to vote for the election of the members of the governing body of ~~his such member's~~ corporation being entitled to one vote. ~~If the votes of 2/3 of the total number~~ *a majority of the voting power* of members of each such corporation who have the voting power above mentioned shall be for the adoption of the agreement or, in the case of a nonstock, nonprofit ~~insurance~~ corporation, other than a nonprofit dental service corporation organized and operated under the nonprofit dental service corporation act, cited at K.S.A. 40-19a01 *et seq.*, and amendments thereto, ~~if 2/3 a majority~~ of the total number of members voting at an annual or special meeting for the purpose of acting on the agreement vote for the adoption of the agreement, then that fact shall be certified on the agreement by the officer of each such corporation performing the duties ordinarily performed by the secretary or assistant secretary of a corporation, ~~under the seal of each such corporation.~~ The agreement so adopted and certified shall be executed and filed, and shall become effective, in accordance with K.S.A. 17-6003, and amendments thereto. The provisions set forth in the last sentence of subsection (c) of K.S.A. 17-6701, and amendments thereto, shall apply to a merger under this section, and the reference to "stockholder" shall be deemed to include "member" hereunder.

(d) If, under the provisions of the articles of incorporation of any one or more of the constituent corporations, there shall be no members who have the right to vote for the election of the members of the governing body of the corporation other than the members of that body themselves, the agreement duly entered into as provided in subsection (b) shall be submitted to the members of the governing body of such corporation or corporations, at a meeting of such corporation or corporations. Notice of the meeting shall be mailed to the members of the governing body in the same manner as is provided in the case of a meeting of the members of a corporation. If at the meeting  $\frac{2}{3}$  of the total number of members of the governing body shall vote by ballot, in person, for the adoption of the agreement, that fact shall be certified on the agreement in the same manner as is provided in the case of the adoption of the agreement by the vote of the members of a corporation. The same procedure shall be followed to consummate the merger or consolidation.

(e) The provisions of subsection (e) of K.S.A. 17-6701, and amendments thereto, shall apply to a merger under this section.

(f) Nothing in this section shall be deemed to authorize the merger of a charitable nonstock corporation into a nonstock corporation if such charitable nonstock corporation would thereby have its charitable status lost or impaired, but a nonstock corporation may be merged into a charitable nonstock corporation which shall continue as the surviving corporation.

Sec. 54. K.S.A. 2003 Supp. 17-6706 is hereby amended to read as follows: 17-6706. (a) Any one or more nonstock corporations of this state may merge or consolidate with one or more other nonstock corporations of any other state or states of the United States or of the District of Columbia, if the laws of such other jurisdiction permit a corporation of

such jurisdiction to merge with a corporation of another jurisdiction. The constituent corporations may merge into a single corporation, which may be any one of the constituent corporations, or they may consolidate into a new nonstock corporation formed by the consolidation, which may be a corporation of the state of incorporation of any one of the constituent corporations, pursuant to an agreement of merger or consolidation, as the case may be, complying and approved in accordance with this section. In addition, any one or more nonstock corporations organized under the laws of any jurisdiction other than one of the United States may merge or consolidate with one or more nonstock corporations of this state if the surviving or resulting corporation will be a corporation of this state, and if the laws under which the other corporation or corporations are formed permit a corporation of such jurisdiction to merge with a corporation of another jurisdiction.

(b) All the constituent corporations shall enter into an agreement of merger or consolidation. The agreement shall state: (1) The terms and conditions of the merger or consolidation; (2) the mode of carrying the same into effect; (3) the manner, *if any*, of converting the memberships of each of the constituent corporations into memberships of the corporation surviving or resulting from such merger or consolidation, *or of cancelling some or all of such memberships*; (4) such other details and provisions as shall be deemed desirable; and (5) such other provisions or facts as shall then be required to be stated in articles of incorporation by the laws of the state which are stated in the agreement to be the laws that shall govern the surviving or resulting corporation and that can be stated in the case of a merger or consolidation. Any of the terms of the agreement of merger or consolidation may be made dependent upon facts ascertainable outside of such agreement, if the manner in which such facts shall operate upon the terms of the agreement is clearly and expressly set forth in the agreement of merger or consolidation. *The term "facts," as used in the preceding sentence, includes, but is not limited to, the occurrence of any event, including a determination or action by any person or body, including the corporation.*

(c) The agreement shall be adopted, approved and executed by each of the constituent corporations in accordance with the laws under which it is formed and, in the case of a Kansas corporation, in the same manner as is provided in K.S.A. 17-6705, and amendments thereto. The agreement shall be filed and shall become effective for all purposes of the laws of this state when and as provided in K.S.A. 17-6705, and amendments thereto, with respect to the merger of nonstock corporations of this state. Insofar as they may be applicable, the provisions set forth in the last sentence of subsection (c) of K.S.A. 17-6702, and amendments thereto, shall apply to a merger under this section, and the reference to "stockholder" shall be deemed to include "member" hereunder.

(d) If the corporation surviving or resulting from the merger or consolidation is to be governed by the laws of any state other than this state, it shall agree that it may be served with process in this state in any proceeding for enforcement of any obligation of any constituent corporation of this state, as well as for enforcement of any obligation of the surviving or resulting corporation arising from the merger or consolidation, and shall irrevocably appoint the secretary of state as its agent to accept service of process in any such suit or other proceedings and shall specify the address to which a copy of such process shall be mailed by the secretary of state. Service of such process shall be made by personally delivering to and leaving with the secretary of state duplicate copies of such process. The secretary of state shall forthwith send by registered mail one of such copies to such surviving or resulting corporation at its address specified, unless such surviving or resulting corporation shall thereafter have designated in writing to the secretary of state a different address for such purpose, in which case it shall be mailed to the last address so designated.

(e) The provisions of subsection (e) of K.S.A. 17-6701, and amendments thereto, shall apply to a merger under this section, if the corporation surviving the merger is a corporation of this state.

Sec. 55. K.S.A. 2003 Supp. 17-6707 is hereby amended to read as follows: 17-6707. (a) Any one or more nonstock corporations of this state, whether or not organized for profit, may merge or consolidate with one or more stock corporations of this state, whether or not organized for profit. The constituent corporations may merge into a single corporation, which may be any one of the constituent corporations, or they may con-

solidate into a new corporation formed by the consolidation, pursuant to an agreement of merger or consolidation, as the case may be, complying and approved in accordance with this section. The surviving constituent corporation or the new corporation may be organized for profit or not organized for profit and may be a stock corporation or a nonstock corporation.

(b) The board of directors of each stock corporation which desires to merge or consolidate and the governing body of each nonstock corporation which desires to merge or consolidate shall adopt a resolution approving an agreement of merger or consolidation. The agreement shall state: (1) The terms and conditions of the merger or consolidation; (2) the mode of carrying the same into effect; (3) such other provisions or facts required or permitted by this act to be stated in articles of incorporation as can be stated in the case of a merger or consolidation, stated in such altered form as the circumstances of the case require; (4) the manner, *if any*, of converting the shares of stock of a stock corporation and the interests of the members of a nonstock corporation into shares or other securities of a stock corporation or membership interests of a nonstock corporation surviving or resulting from such merger or consolidation, *or of cancelling some or all of such shares or interests* and, if any shares of any such stock corporation or membership interests of any such nonstock corporation are not *to remain outstanding*, to be converted solely into shares or other securities of the stock corporation or membership interests of the nonstock corporation surviving or resulting from such merger or consolidation *or to be cancelled*, the cash, property, rights or securities of any other corporation or entity which the holders of shares of any such stock corporation or membership interests of any such nonstock corporation are to receive in exchange for, or upon conversion of such shares or membership interests, and the surrender of any certificates evidencing them, which cash, property, rights, or securities of any other corporation or entity may be in addition to or in lieu of shares or other securities of any stock corporation or membership interests of any nonstock corporation surviving or resulting from such merger or consolidation; and (5) such other details or provisions as are deemed desirable. In such merger or consolidation, the interests of members of a constituent nonstock corporation may be treated in various ways so as to convert such interests into interests of value, other than shares of stock, in the surviving or resulting stock corporation or into shares of stock in the surviving or resulting stock corporation, voting or nonvoting, or into creditor interests or any other interests of value equivalent to their membership interests in their nonstock corporation. The voting rights of members of a constituent nonstock corporation need not be considered an element of value in measuring the reasonable equivalence of the value of the interests received in the surviving or resulting stock corporation by members of a constituent nonstock corporation, nor need the voting rights of shares of stock in a constituent stock corporation be considered as an element of value in measuring the reasonable equivalence of the value of the interests in the surviving or resulting nonstock corporation received by stockholders of a constituent stock corporation, and the voting or nonvoting shares of a stock corporation may be converted into voting or nonvoting regular, life, general, special or other type of membership, however designated, creditor interests or participating interests, in any nonstock corporation surviving or resulting from such merger or consolidation of a stock corporation and a nonstock corporation. Any of the terms of the agreement of merger or consolidation may be made dependent upon facts ascertainable outside of such agreement, provided that the manner in which such facts shall operate upon the terms of the agreement is clearly and expressly set forth in the agreement of merger or consolidation. *The term "facts," as used in the preceding sentence, includes, but is not limited to, the occurrence of any event, including a determination or action by any person or body, including the corporation.*

(c) The agreement required by subsection (b), in the case of each constituent stock corporation, shall be adopted, approved and executed by each constituent corporation in the same manner as is provided in K.S.A. 17-6701, and amendments thereto, and, in the case of each constituent nonstock corporation, shall be adopted, approved and executed by each of such constituent corporations in the same manner as is provided in K.S.A. 17-6705, and amendments thereto. The agreement shall be filed and shall become effective for all purposes of the laws of this

state when and as provided in K.S.A. 17-6701, and amendments thereto, with respect to the merger of stock corporations of this state. Insofar as they may be applicable, the provisions set forth in the last sentence of subsection (c) of K.S.A. 17-6701, and amendments thereto, shall apply to a merger under this section, and the reference to "stockholder" shall be deemed to include "member" hereunder.

(d) The provisions of subsection (e) of K.S.A. 17-6701, and amendments thereto, shall apply to a merger under this section, if the surviving corporation is a corporation of this state; the provisions of subsection (d) of K.S.A. 17-6701, and amendments thereto, shall apply to any constituent stock corporation participating in a merger or consolidation under this section; and the provisions of subsection (f) of K.S.A. 17-6701, and amendments thereto, shall apply to any constituent stock corporation participating in a merger under this section.

(e) Nothing in this section shall be deemed to authorize the merger of a charitable nonstock corporation into a stock corporation, if the charitable status of such nonstock corporation would thereby be lost or impaired. A stock corporation may be merged into a charitable nonstock corporation which shall continue as the surviving corporation.

Sec. 56. K.S.A. 2003 Supp. 17-6712 is hereby amended to read as follows: 17-6712. (a) When used in this section, the word "stockholder" means a holder of record of stock in a stock corporation and also a member of record of a nonstock corporation; the words "stock" and "share" mean and include what is ordinarily meant by those words and also membership or membership interest of a member of a nonstock corporation.

~~(b) The corporation surviving or resulting from any merger or consolidation, within 10 days after the effective date of the merger or consolidation, shall notify each stockholder of any corporation of this state so merging or consolidating who objected thereto in writing and whose shares either were not entitled to vote or were not voted in favor of the merger or consolidation, and who filed such written objection with the corporation before the taking of the vote on the merger or consolidation, that the merger or consolidation has become effective. If any such stockholder, within 20 days after the date of mailing of the notice, shall demand in writing, from the corporation surviving or resulting from the merger or consolidation, payment of the value of the stockholder's stock, the surviving or resulting corporation shall pay to the stockholder, within 30 days after the expiration of the period of 20 days, the value of the stockholder's stock on the effective date of the merger or consolidation, exclusive of any element of value arising from the expectation or accomplishment of the merger or consolidation.~~

~~—(c) If during a period of 30 days following the period of 20 days provided for in subsection (b), the corporation and any such stockholder fail to agree upon the value of such stock, any such stockholder, or the corporation surviving or resulting from the merger or consolidation, may demand a determination of the value of the stock of all such stockholders by an appraiser or appraisers to be appointed by the district court, by filing a petition with the court within four months after the expiration of the thirty day period.~~

~~—(d) Upon the filing of any such petition by a stockholder, service of a copy thereof shall be made upon the corporation, which shall file with the clerk of such court, within 10 days after such service, a duly verified list containing the names and addresses of all stockholders who have demanded payment for their shares and with whom agreements as to the value of their shares have not been reached by the corporation. If the petition shall be filed by the corporation, the petition shall be accompanied by such duly verified list. The clerk of the court shall give notice of the time and place fixed for the hearing of such petition by registered or certified mail to the corporation and to the stockholders shown upon the list at the addresses therein stated and notice shall also be given by publishing a notice at least once, at least one week before the day of the hearing, in a newspaper of general circulation in the county in which the court is located. The court may direct such additional publication of notice as it deems advisable. The forms of the notices by mail and by publication shall be approved by the court.~~

~~—(e) After the hearing on such petition the court shall determine the stockholders who have complied with the provisions of this section and become entitled to the valuation of and payment for their shares, and shall appoint an appraiser or appraisers to determine such value. Any such~~

appraiser may examine any of the books and records of the corporation or corporations the stock of which such appraiser is charged with the duty of valuing, and such appraiser shall make a determination of the value of the shares upon such investigation as seems proper to the appraiser. The appraiser or appraisers shall also afford a reasonable opportunity to the parties interested to submit to the appraiser or appraisers pertinent evidence on the value of the shares. The appraiser or appraisers, also, shall have the powers and authority conferred upon masters by K.S.A. 60-253 and amendments thereto.

— (f) — The appraiser or appraisers shall determine the value of the stock of the stockholders adjudged by the court to be entitled to payment therefor and shall file a report respecting such value in the office of the clerk of the court, and notice of the filing of such report shall be given by the clerk of the court to the parties in interest. Such report shall be subject to exceptions to be heard before the court both upon the law and facts. The court by its decree shall determine the value of the stock of the stockholders entitled to payment therefor and shall direct the payment of such value, together with interest, if any, as hereinafter provided, to the stockholders entitled thereto by the surviving or resulting corporation. Upon payment of the judgment by the surviving or resulting corporation, the clerk of the district court shall surrender to the corporation the certificates of shares of stock held by the clerk pursuant to subsection (g). The decree may be enforced as other judgments of the district court may be enforced, whether such surviving or resulting corporation be a corporation of this state or of any other state.

— (g) — At the time of appointing the appraiser or appraisers, the court shall require the stockholders who hold certificated shares and who demanded payment for their shares to submit their certificates of stock to the clerk of the court, to be held by the clerk pending the appraisal proceedings. If any stockholder fails to comply with such direction, the court shall dismiss the proceedings as to such stockholder.

— (h) — The cost of any such appraisal, including a reasonable fee to and the reasonable expenses of the appraiser, but exclusive of fees of counsel or of experts retained by any party, shall be determined by the court and taxed upon the parties to such appraisal or any of them as appears to be equitable, except that the cost of giving the notice by publication and by registered or certified mail hereinabove provided for shall be paid by the corporation. The court, on application of any party in interest, shall determine the amount of interest, if any, to be paid upon the value of the stock of the stockholders entitled thereto.

— (i) — Any stockholder who has demanded payment of the stockholder's stock as herein provided shall not thereafter be entitled to vote such stock for any purpose or be entitled to the payment of dividends or other distribution on the stock, except dividends or other distributions payable to stockholders of record at a date which is prior to the effective date of the merger or consolidation, unless the appointment of an appraiser or appraisers shall not be applied for within the time herein provided, or the proceeding be dismissed as to such stockholder, or unless such stockholder with the written approval of the corporation shall deliver to the corporation a written withdrawal of the stockholder's objections to and an acceptance of the merger or consolidation, in any of which cases the right of such stockholder to payment for the stockholder's stock shall cease.

— (j) — The shares of the surviving or resulting corporation into which the shares of such objecting stockholders would have been converted had they assented to the merger or consolidation shall have the status of authorized and unissued shares of the surviving or resulting corporation.

— (k) — This section shall not apply to the shares of any class or series of a class of stock, which, at the record date fixed to determine the stockholders entitled to receive notice of and to vote at the meeting of stockholders at which the agreement of merger or consolidation is to be acted on, were either (1) registered on a national securities exchange or designated as a national market system security on an interdealer quotation system by the national association of securities dealers, inc., or (2) held of record by not less than 2,000 stockholders, unless the articles of incorporation of the corporation issuing such stock shall otherwise provide; nor shall this section apply to any of the shares of stock of the constituent corporation surviving a merger, if the merger did not require for its approval the vote of the stockholders of the surviving corporation, as pro-



vided in subsection (f) of K.S.A. 17-6701 and amendments thereto. This subsection shall not be applicable to the holders of a class or series of a class of stock of a constituent corporation if under the terms of a merger or consolidation pursuant to K.S.A. 17-6701 or 17-6702, and amendments thereto, such holders are required to accept for such stock anything except (i) stock or stock and cash in lieu of fractional shares of the corporation surviving or resulting from such merger or consolidation, or (ii) stock or stock and cash in lieu of fractional shares of any other corporation, which at the record date fixed to determine the stockholders entitled to receive notice of and to vote at the meeting of stockholders at which the agreement of merger or consolidation is to be acted on, were either registered on a national securities exchange or held of record by not less than 2,000 stockholders, or (iii) a combination of stock or stock and cash in lieu of fractional shares as set forth in (i) and (ii) of this subsection.

(b) (1) Appraisal rights shall be available for the shares of any class or series of stock of a constituent corporation in a merger or consolidation to be effected pursuant to K.S.A. 17-6701, and amendments thereto, other than a merger effected pursuant to subsection (g) of K.S.A. 17-6701, and amendments thereto, K.S.A. 17-6702, 17-6704, 17-6707, 17-6708 or 17-7703, and amendments thereto, except that: (A) No appraisal rights under this section shall be available for the shares of any class or series of stock, which stock, or depository receipts in respect thereof, at the record date fixed to determine the stockholders entitled to receive notice of and to vote at the meeting of stockholders to act upon the agreement of merger or consolidation, were either listed on a national securities exchange or designated as a national market system security on an interdealer quotation system by the national association of securities dealers, inc., or held of record by more than 2,000 holders; (B) no appraisal rights shall be available for any shares of stock of the constituent corporation surviving a merger if the merger did not require for its approval the vote of the stockholders of the surviving corporation as provided in subsection (f) of K.S.A. 17-6701, and amendments thereto.

(2) Notwithstanding the provisions of subsections (b)(1)(A) and (b)(1)(B), appraisal rights under this section shall be available for the shares of any class or series of stock of a constituent corporation if the holders thereof are required by the terms of an agreement of merger or consolidation pursuant to K.S.A. 17-6701, 17-6702, 17-6704, 17-6707, 17-6708 and 17-7703, and amendments thereto, to accept for such stock anything except:

(A) Shares of stock of the corporation surviving or resulting from such merger or consolidation, or depository receipts in respect of such shares of stock;

(B) shares of stock of any other corporation, or depository receipts in respect of such shares of stock, which shares of stock, or depository receipts in respect of such shares of stock, or depository receipts at the effective date of the merger or consolidation will be either listed on a national securities exchange or designated as a national market system security on an interdealer quotation system by the national association of securities dealers, inc. or held of record by more than 2,000 holders;

(C) cash in lieu of fractional shares or fractional depository receipts described in the foregoing subparagraphs (A) and (B); or

(D) any combination of the shares of stock, depository receipts and cash in lieu of fractional shares or fractional depository receipts described in the foregoing subparagraphs (A), (B) and (C).

(3) In the event all of the stock of a subsidiary Kansas corporation party to a merger effected under K.S.A. 17-6703, and amendments thereto, is not owned by the parent corporation immediately prior to the merger, appraisal rights shall be available for the shares of the subsidiary Kansas corporation.

(c) Any corporation may provide in its articles of incorporation that appraisal rights under this section shall be available for the shares of any class or series of its stock as a result of an amendment to its articles of incorporation, any merger or consolidation in which the corporation is a constituent corporation or the sale of all or substantially all of the assets of the corporation. If the articles of incorporation contains such a provision, the procedures of this section, including those set forth in subsections (d) and (e), shall apply as nearly as is practicable.

(d) Appraisal rights shall be perfected as follows:

(1) If a proposed merger or consolidation for which appraisal rights

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

(2) If the merger or consolidation was approved pursuant to K.S.A. 17-6518 or K.S.A. 17-6703, and amendments thereto, then, either a constituent corporation before the effective date of the merger or consolidation, or the surviving or resulting corporation within 10 days thereafter, shall notify each of the holders of any class or series of stock of such constituent corporation who are entitled to appraisal rights of the approval of the merger or consolidation and that appraisal rights are available for any or all shares of such class or series of stock of such constituent corporation, and shall include in such notice a copy of this section. Such notice may, and, if given on or after the effective date of the merger or consolidation, shall, also notify such stockholders of the effective date of the merger or consolidation. Any stockholder entitled to appraisal rights may, within 20 days after the date of mailing of such notice, demand in writing from the surviving or resulting corporation the appraisal of such holder's shares. Such demand will be sufficient if it reasonably informs the corporation of the identity of the stockholder and that the stockholder intends thereby to demand the appraisal of such holder's shares. If such notice did not notify stockholders of the effective date of the merger or consolidation, either: (A) Each such constituent corporation shall send a second notice before the effective date of the merger or consolidation notifying each of the holders of any class or series of stock of such constituent corporation that are entitled to appraisal rights of the effective date of the merger or consolidation; or (B) the surviving or resulting corporation shall send such a second notice to all such holders on or within 10 days after such effective date; provided, however, that if such second notice is sent more than 20 days following the sending of the first notice, such second notice need only be sent to each stockholder who is entitled to appraisal rights and who has demanded appraisal of such holder's shares in accordance with this subsection. An affidavit of the secretary or assistant secretary or of the transfer agent of the corporation that is required to give either notice that such notice has been given shall, in the absence of fraud, be prima facie evidence of the facts stated therein. For purposes of determining the stockholders entitled to receive either notice, each constituent corporation may fix, in advance, a record date that shall be not more than 10 days prior to the date the notice is given, provided, that if the notice is given on or after the effective date of the merger or consolidation, the record date shall be such effective date. If no record date is fixed and the notice is given prior to the effective date, the record date shall be the close of business on the day next preceding the day on which the notice is given.

(e) Within 120 days after the effective date of the merger or consolidation, the surviving or resulting corporation or any stockholder who has complied with subsections (a) and (d) and who is otherwise entitled to appraisal rights, may file a petition in the district court demanding a determination of the value of the stock of all such stockholders. Notwithstanding the foregoing, at any time within 60 days after the effective date of the merger or consolidation, any stockholder shall have the right to withdraw such stockholder's demand for appraisal and to accept the terms

offered upon the merger or consolidation. Within 120 days after the effective date of the merger or consolidation, any stockholder who has complied with the requirements of subsection (a) and (d), upon written request, shall be entitled to receive from the corporation surviving the merger or resulting from the consolidation a statement setting forth the aggregate number of shares not voted in favor of the merger or consolidation and with respect to which demands for appraisal have been received and the aggregate number of holders of such shares. Such written statement shall be mailed to the stockholder within 10 days after such stockholder's written request for such a statement is received by the surviving or resulting corporation or within 10 days after expiration of the period for delivery of demands for appraisal under subsection (d), whichever is later.

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

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

(h) After determining the stockholders entitled to an appraisal, the court shall appraise the shares, determining their fair value exclusive of any element of value arising from the accomplishment or expectation of the merger or consolidation, together with a fair rate of interest, if any, to be paid upon the amount determined to be the fair value. In determining such fair value, the court shall take into account all relevant factors. In determining the fair rate of interest, the court may consider all relevant factors, including the rate of interest which the surviving or resulting corporation would have had to pay to borrow money during the pendency of the proceeding. Upon application by the surviving or resulting corporation or by any stockholder entitled to participate in the appraisal proceeding, the court may, in its discretion, permit discovery or other pretrial proceedings and may proceed to trial upon the appraisal prior to the final determination of the stockholder entitled to an appraisal. Any stockholder whose name appears on the list filed by the surviving or resulting corporation pursuant to subsection (f) and who has submitted such stockholder's certificates of stock to the clerk of the court, if such is required, may participate fully in all proceedings until it is finally determined that such stockholder is not entitled to appraisal rights under this section.

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

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

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

(l) *The shares of the surviving or resulting corporation to which the shares of such objecting stockholders would have been converted had they assented to the merger or consolidation shall have the status of authorized and unissued shares of the surviving or resulting corporation.*

Sec. 57. K.S.A. 17-6801 is hereby amended to read as follows: 17-6801. (a) Every corporation at any meeting of its board of directors may sell, lease or exchange all or substantially all of its property and assets, including its good will and its corporate franchises, upon such terms and conditions and for such consideration, which may consist in whole or in part of money or other property, including shares of stock in, or other securities of, *or both*, any other corporation or corporations, as its board of directors deems expedient and for the best interests of the corporation, when and as authorized by a resolution adopted by a majority of the outstanding stock of the corporation entitled to vote thereon or, in the case of non-stock corporations, by a majority of the members thereof entitled to vote thereon, at a meeting thereof duly called upon at least ~~twenty (20)~~ 20 days' notice. The notice of the meeting shall state that such a resolution will be considered.

(b) Notwithstanding authorization or consent to a proposed sale, lease or exchange of a corporation's property and assets pursuant to subsection (a), the board of directors may abandon such proposed sale, lease or exchange without further action by the stockholders or members, as the case may be, subject to the rights, if any, of third parties under any contract relating thereto.

Sec. 58. K.S.A. 2003 Supp. 17-6804 is hereby amended to read as follows: 17-6804. (a) If it is deemed advisable in the judgment of the board of directors of any corporation that it should be dissolved, the board, after the adoption of a resolution to that effect by a majority of the whole board at any meeting called for that purpose, shall give notice by mail to each stockholder entitled to vote on a dissolution of the adoption of the resolution and of a meeting of stockholders to take action upon the resolution.

(b) At the meeting a vote shall be taken for and against the proposed dissolution. If a majority of the outstanding stock of the corporation entitled to vote votes for the proposed dissolution, a certificate stating that the dissolution has been authorized in accordance with the provisions of this section and setting forth the names and residences of the directors and officers shall be executed and filed in accordance with K.S.A. 17-6003 and amendments thereto. The secretary of state, upon being satisfied that the requirements of this section have been complied with, shall issue a certificate that the certificate has been filed, and thereupon, the corporation shall be dissolved.

(c) Whenever all the stockholders entitled to vote on a dissolution shall consent in writing to a dissolution, either in person or by duly authorized attorney, no meeting of directors or stockholders shall be nec-

essary, but on filing the consent in the office of the secretary of state in accordance with K.S.A. 17-6003 and amendments thereto, the secretary of state, upon being satisfied that the requirements of this section have been complied with, shall issue a certificate that the consent to dissolution has been filed, and thereupon the corporation shall be dissolved. In the event that the consent ~~is~~ signed by an attorney, the original power of attorney or a photocopy thereof shall be attached to and filed with the consent. The consent filed with the secretary of state shall have attached to it the affidavit of the secretary or some other officer of the corporation stating that the consent has been signed by or on behalf of all the stockholders entitled to vote on a dissolution; in addition there shall be attached to the consent a certification by the secretary or some officer of the corporation setting forth the names and residences of the directors and officers of the corporation.

(d) If the stockholders of a corporation ~~of the state~~, having only two stockholders, each of which owns 50% of the stock therein, are unable to agree upon the desirability of dissolving the corporation and disposing of the corporate assets, either stockholder may file with the district court a petition stating that it desires to dissolve the corporation and to dispose of the assets thereof in accordance with a plan to be agreed upon by both stockholders. Such petition shall have attached thereto a copy of the proposed plan of dissolution and distribution and a certificate stating that copies of such petition and plan have been transmitted in writing to the other stockholder and to the directors and officers of such corporation.

Unless both stockholders file with the district court: (1) Within three months of the date of the filing of such petition, a certificate stating that they have agreed on such plan, or a modification thereof; and (2) within one year from the date of the filing of such petition, a certificate stating that the distribution provided by such plan has been completed, the court may *either*: (A) Dissolve such corporation and, by appointment of one or more ~~trustees or~~ receivers with all the powers and title of a ~~trustee or~~ receiver appointed under K.S.A. 17-6808 and amendments thereto, may administer and wind up its affairs; (B) *order the redemption of the stock of one of the stockholders on such terms as are just and equitable*; or (C) *decline to grant any relief*. Either or both of the above periods of time may be extended by agreement of the stockholders, evidenced by a certificate filed with the court prior to the expiration of such period.

Sec. 59. K.S.A. 17-6805a is hereby amended to read as follows: 17-6805a. Notwithstanding any provision of law or the articles of incorporation, the articles of incorporation of each nonprofit corporation that qualifies otherwise for an exemption under section 501(c)(3) of the internal revenue code of ~~1954~~ 1986, as amended (26 U.S.C. §501(c)(3)), shall be considered to contain the following provision:

Upon the dissolution of the corporation, the board of directors or governing body of the corporation, after paying or providing for the payment of all liabilities of the corporation, shall dispose of all the assets of the corporation exclusively: (1) In accordance with the purposes of the corporation, in the manner determined by the board of directors or governing body, or (2) to organizations qualified for exemption under section 501(c)(3) of the internal revenue code of ~~1954~~ 1986, as amended (26 U.S.C. §501(c)(3)), and specified by the board of directors or governing body. Any assets of the corporation not so disposed of shall be disposed of by the district court of the county where the principal office of the corporation is then located, exclusively for the purposes or to the organizations provided above, as determined by the court.

Sec. 60. K.S.A. 17-6808 is hereby amended to read as follows: 17-6808. When any corporation organized under this act shall be dissolved in any manner whatever, the district court, on application of any creditor, stockholder or director of the corporation, or any other person who shows good cause therefor, at any time, either may appoint one or more of the directors of the corporation ~~to be trustees, or may appoint~~ *or* one or more *other* persons to be receivers, of and for the corporation, *or both*, to take charge of the corporation's property, and to collect the debts and property due and belonging to the corporation, with power to prosecute and defend, in the name of the corporation, or otherwise, all such suits as may be necessary or proper for the purposes aforesaid, and to appoint an agent or agents under them, and to do all other acts which might be done by the corporation, if in being, that may be necessary for the final settlement of the unfinished business of the corporation. The powers of the ~~trustees~~

or receivers may be continued as long as the court shall think necessary for the purposes aforesaid.

Sec. 61. K.S.A. 17-6810 is hereby amended to read as follows: 17-6810. The ~~trustees or~~ directors or, if appointed by the district court, the receivers of a dissolved corporation, after payment of all allowances, expenses and costs, and the satisfaction of all special and general liens upon the funds of the corporation to the extent of their lawful priority, shall pay the other debts due from the corporation, if the funds in their hands shall be sufficient therefor, and if not, they shall distribute the same ratably among all the creditors who shall prove their debts in the manner that shall be directed by an order or decree of the court for that purpose. If there shall be any balance remaining after the payment of the debts and necessary expenses, they shall distribute and pay the same to and among those who shall be justly entitled thereto, as having been stockholders of the corporation or their legal representatives.

Sec. 62. K.S.A. 17-6811 is hereby amended to read as follows: 17-6811. If any corporation becomes dissolved in any manner whatever before final judgment is obtained in any action pending or commenced in any court of this state against the corporation, the action shall not abate by reason thereof, but the dissolution of the corporation being suggested upon the record, and the names of the ~~trustees or~~ receivers of the corporation being entered upon the record, and notice thereof served upon the ~~trustees or~~ receivers, or if such service be impracticable, upon the counsel of record in such case, the action shall proceed to final judgment against the ~~trustees or~~ receivers in the name of the corporation.

Sec. 63. K.S.A. 17-6902 is hereby amended to read as follows: 17-6902. (a) ~~Trustees or~~ Receivers appointed by the district court of and for any corporation, and their respective survivors and successors, upon their appointment and qualification or upon the death, resignation or discharge of any ~~co-trustee or~~ co-receiver, shall be vested by operation of law and without any act or deed with the title of the corporation to all of its property, real, personal or mixed of whatsoever nature, kind, class or description, and wheresoever situate, except real estate situated outside this state.

(b) Within ~~twenty (20)~~ 20 days after the date of their qualification, ~~trustees or~~ receivers appointed by the court shall file in the office of the register of deeds of each county in this state in which any real estate belonging to the corporation may be situated, a certified copy of the order of their appointment and evidence of their qualification.

(c) This section shall not apply to receivers appointed *pendente lite*.

Sec. 64. K.S.A. 17-6903 is hereby amended to read as follows: 17-6903. All notices required to be given to stockholders and creditors in any action in which a receiver ~~or trustee~~ for a corporation was appointed shall be given by the clerk of the district court or in the manner provided by any applicable section of the code of civil procedure, unless otherwise ordered by the district court.

Sec. 65. K.S.A. 17-6904 is hereby amended to read as follows: 17-6904. As soon as convenient, ~~trustees or~~ receivers shall file in the office of the clerk of the district court of the county in which the proceeding is pending, a full and complete itemized inventory of all the assets of the corporation, which shall show their nature and probable value, and an account of all debts due from and to the corporation, as nearly as the same can be ascertained. They shall make a report to the court of their proceedings whenever and as often as the court shall direct.

Sec. 66. K.S.A. 17-6905 is hereby amended to read as follows: 17-6905. All creditors shall make proof under oath of their respective claims against the corporation and shall cause such proof of claim to be filed in the office of the clerk of the district court of the county in which the proceeding is pending within six (6) months from the date of the appointment of a ~~trustee or~~ receiver for the corporation, or within such other period of time if the court shall so order and direct. All creditors and claimants failing to do so, within the time limited by this section, or the time prescribed by the order of the court, may be barred by the court from participating in the distribution of the assets of the corporation. The court also may prescribe what notice, by publication or otherwise, shall be given to the creditors of the time fixed for the filing and making proof of claims.

Sec. 67. K.S.A. 17-6906 is hereby amended to read as follows: 17-

6906. (a) The clerk of the district court, immediately upon the expiration of the time fixed for the filing of claims, in compliance with the provisions of K.S.A. 17-6905, *and amendments thereto*, shall notify the ~~trustee or~~ receiver of the filing of the claims, and the ~~trustee or~~ receiver, within ~~thirty (30)~~ 30 days after receiving the notice, shall inspect the claims, and if the ~~trustee or~~ receiver or any creditor shall not be satisfied with the validity or correctness of the same, or any of them, the ~~trustee or~~ receiver shall forthwith notify the creditors whose claims are disputed of ~~his such~~ decision. The ~~trustee or~~ receiver shall require all creditors whose claims are disputed to submit themselves to such examination in relation to their claims as the ~~trustee or~~ receiver shall direct, and the creditors shall produce such books and papers relating to their claims as shall be required. The ~~trustee or~~ receiver shall have power to examine, under oath or affirmation, all witnesses produced before ~~him the receiver~~ touching the claims, and ~~he~~ shall recommend to the court the allowance or disallowance of the claims, or any part thereof, and notify the claimants of ~~his such~~ determination.

(b) The court shall approve, disapprove or modify the recommendations of the ~~trustee or~~ receiver and shall cause notice thereof to be given to the claimants. Within ~~thirty (30)~~ 30 days after receipt of such notice, any creditor or claimant dissatisfied with the court's determination shall have the right to a hearing thereon. The court, after hearing, shall determine the rights of the parties. Any party aggrieved thereby may appeal to the supreme court as a matter of right from the order or decree expressing such determination.

Sec. 68. K.S.A. 17-6907 is hereby amended to read as follows: 17-6907. Whenever the property of a corporation is at the time of the appointment of a receiver ~~or trustee~~ encumbered with liens of any character, and the validity, extent or legality of any such lien is disputed or brought in question, and the property of the corporation is of a character which will deteriorate in value pending the litigation respecting the lien, the district court may order the receiver or trustee to sell the property of the corporation, clear of all encumbrances, at public or private sale, for the best price that can be obtained therefor. The net proceeds arising from the sale thereof, after deducting the costs of the sale, shall be paid into the court, there to remain subject to the order of the court, and to be disposed of as the court shall direct.

Sec. 69. K.S.A. 17-6908 is hereby amended to read as follows: 17-6908. The district court, before making distribution of the assets of a corporation among the creditors or stockholders thereof, shall allow and pay out of the assets: (1) A reasonable compensation to the receiver ~~or trustee~~ for ~~his the receiver's~~ services; (2) the cost and expenses incurred in and about the execution of ~~his trust the receivership~~, including reasonable attorneys' fees; and (3) the costs of the proceedings in the court.

Sec. 70. K.S.A. 17-6909 is hereby amended to read as follows: 17-6909. A ~~trustee or~~ receiver, upon application by ~~him the receiver~~ in the court in which any suit is pending, shall be substituted as party plaintiff in the place of the corporation in any suit or proceeding which was so pending at the time of ~~his the receiver's~~ appointment. No action against a ~~trustee or~~ receiver of a corporation shall abate by reason of ~~his the receiver's~~ death, but, upon suggestion of the facts on the record, shall be continued against ~~his the receiver's~~ successor or against the corporation in case no new ~~trustee or~~ receiver is appointed.

Sec. 71. K.S.A. 17-6910 is hereby amended to read as follows: 17-6910. Whenever any corporation of this state, or any foreign corporation doing business in this state, shall become insolvent, the employees doing labor or service of whatever character in the regular employ of the corporation, shall have a lien upon the assets thereof for the amount of the wages due to them, not exceeding two ~~(2)~~ months' wages, respectively, which shall be paid prior to any other debt or debts of the corporation. The word "employee" as used in this section shall not be construed to include ~~any of the officers anyone owning or controlling a majority of the voting stock or voting power~~ of the corporation.

Sec. 72. K.S.A. 17-6911 is hereby amended to read as follows: 17-6911. The liquidation of the assets and business of an insolvent corporation may be discontinued at any time during the liquidation proceedings when it is established that cause for liquidation no longer exists. In such event the district court in its discretion, and subject to such condition as

it may deem appropriate, may dismiss the proceedings and direct the receiver ~~or trustee~~ to redeliver to the corporation all of its remaining property and assets.

Sec. 73. K.S.A. 2003 Supp. 17-7001 is hereby amended to read as follows: 17-7001. (a) At any time prior to the expiration of three years following the dissolution of a corporation pursuant to K.S.A. 17-6804 and amendments thereto, or, at any time prior to the expiration of such longer period as the court may have directed pursuant to K.S.A. 17-6807 and amendments thereto, a corporation may revoke the dissolution theretofore effected by it in the following manner:

(1) The board of directors shall adopt a resolution recommending that the dissolution be revoked and directing that the question of the revocation be submitted to a vote at a special meeting of stockholders.

(2) Notice of the special meeting of stockholders shall be given in accordance with K.S.A. 17-6512 and amendments thereto to each stockholder whose shares were entitled to vote upon a proposed dissolution before the corporation was dissolved.

(3) At the meeting, a vote of the stockholders shall be taken on the resolution to revoke the dissolution. If a majority of the stock of the corporation which was outstanding and entitled to vote upon a dissolution at the time of its dissolution shall be voted for the resolution, a certificate of revocation of dissolution shall be executed in accordance with K.S.A. 17-6003 and amendments thereto, which shall state:

- (i) The name of the corporation;
- (ii) the names and respective addresses of its officers;
- (iii) the names and respective addresses of its directors; and
- (iv) that a majority of the stock of the corporation which was outstanding and entitled to vote upon a dissolution at the time of its dissolution have voted in favor of a resolution to revoke the dissolution.

(b) Upon the filing of the certificate of revocation of dissolution in the office of the secretary of state, ~~the secretary of state, upon being satisfied that the requirements of this section have been complied with, shall issue the secretary's certificate that the dissolution has been revoked.~~ Upon the issuance of such certificate by the secretary of state, the revocation of the dissolution shall become effective and the corporation may again carry on its business.

(c) If, after the dissolution of any such corporation became effective, any other corporation organized under the laws of this state shall have adopted the same name as such corporation, or shall have adopted a name so nearly similar thereto as not to distinguish it from such corporation, or any foreign corporation shall have qualified to do business in this state under the same name as such corporation or under a name so nearly similar thereto as not to distinguish it from such corporation, then such corporation shall not be reinstated under the same name which it bore when its dissolution became effective. In such case, it shall adopt and be reinstated under some other name, and the certificate to be filed under the provisions of this section shall set forth the name borne by such corporation at the time its dissolution became effective and the new name under which it is to be reinstated.

(d) *Upon the filing of the certificate with the secretary of state to which subsection (b) refers, the provisions of subsection (d) of K.S.A. 17-6501, and amendments thereto, shall govern, and the period of time the corporation was in dissolution shall be included within the calculation of the 30-day and 13-month periods to which subsection (d) of K.S.A. 17-6501, and amendments thereto refers. An election of directors, however, may be held at the special meeting of stockholders to which subsection (a) refers and, in that event, that meeting of stockholders shall be deemed an annual meeting of stockholders for purposes of subsection (d) of K.S.A. 17-6501, and amendments thereto.*

(e) Nothing in this section shall be construed to affect the jurisdiction or power of the district court under K.S.A. 17-6808 and 17-6809 and amendments thereto.

Sec. 74. K.S.A. 17-7003 is hereby amended to read as follows: 17-7003. Any corporation desiring to renew, extend and continue its corporate existence, upon complying with the provisions of K.S.A. 17-7002, *and amendments thereto*, shall be and continue *as a corporation* for the time stated in its certificate of renewal, ~~a corporation~~, and in addition to the rights, privileges and immunities conferred by its articles of incorporation, shall possess and enjoy all the benefits of this act which are applicable to



the nature of its business, and shall be subject to the restrictions and liabilities imposed by this act on such corporations.

Sec. 75. K.S.A. 17-7103 is hereby amended to read as follows: 17-7103. The liability of a corporation of this state, or the stockholders, directors or officers thereof, or the rights or remedies of the creditors thereof, or of persons doing or transacting business with the corporation, shall not in any way be lessened or impaired by the voluntary transfer or sale of the assets, properties and other rights of the corporation, or by the increase or decrease in the capital stock of the corporation, or by its merger or consolidation with one or more corporations, *or other entities*, or by any change or amendment in its articles of incorporation.

Sec. 76. K.S.A. 17-7104 is hereby amended to read as follows: 17-7104. (a) No domestic or foreign corporation shall be permitted to set up or rely upon the want of legal organization as a defense to any action against it; nor shall any person transacting business with such corporation, or sued for injury done to its property, be permitted to rely upon such want of legal organization as a defense.

(b) This section shall not be construed to prevent judicial ~~injury~~ *inquiry* into the regularity or validity of the organization of a corporation, or its lawful possession of any corporate power it may assert in any other suit or proceeding where its corporate existence or the power to exercise the corporate rights it asserts is challenged, and evidence tending to sustain the challenge shall be admissible in any such suit or proceeding.

Sec. 77. K.S.A. 17-7202 is hereby amended to read as follows: 17-7202. (a) A close corporation is a corporation organized under this act whose articles of incorporation contain the provisions required by K.S.A. 17-6002, *and amendments thereto*, and, in addition, provide that:

(1) All of the corporation's issued stock of all classes, exclusive of treasury shares, shall be held of record by not more than a specified number of persons, not exceeding ~~thirty (30)~~ 35; and

(2) All of the issued stock of all classes shall be subject to one or more of the restrictions on transfer permitted by K.S.A. 17-6426, *and amendments thereto*; and

(3) The corporation shall make no offering of any of its stock of any class which would constitute a "public offering" within the meaning of the United States securities act of 1933, as it may be amended from time to time.

(b) The articles of incorporation of a close corporation may set forth the qualifications of stockholders, either by specifying classes of persons who shall be entitled to be holders of record of stock of any class, or by specifying classes of persons who shall not be entitled to be holders of stock of any class, or both.

(c) For purposes of determining the number of holders of record of the stock of a close corporation, stock which is held in joint or common tenancy or by the entireties shall be treated as held by one stockholder.

Sec. 78. K.S.A. 2003 Supp. 17-7301 is hereby amended to read as follows: 17-7301. (a) As used in this act, the words "foreign corporation" mean a corporation organized under the laws of any jurisdiction other than this state.

(b) No foreign corporation shall do any business in this state, through or by branch offices, agents or representatives located in this state, until it has filed in the office of the secretary of state of this state an application for authority to engage in business in this state as a foreign corporation. Such application shall be filed in accordance with K.S.A. 17-6003 and amendments thereto and shall ~~set forth~~ *include*:

(1) A certificate issued within 90 days of the date of application by the proper officer of the jurisdiction where such corporation is incorporated *or by a third-party agent authorized by the secretary of state* attesting to the fact that such corporation is a corporation in good standing in such jurisdiction;

(2) *a statement that the corporation is in good standing in the state of incorporation as of the date the application is signed;*

(3) ~~the address of the principal office of the corporation is located;~~  
~~(3) the address of the principal office or place of business in this state is to be located, if known;~~

(4) the full nature and character of the business the corporation proposes to conduct in this state, *including whether the corporation operates for profit or not for profit;*

~~(5) the name and address of each of the officers and trustees or di-~~

rectors of the corporation;

~~— (6) a statement as to when the corporate existence of the corporation will expire in the state of incorporation;~~

~~— (7) a detailed statement of the assets and liabilities of the corporation, as of a date not earlier than 12 months prior to the filing date;~~

~~— (8) (5) the location of the registered office of the corporation in this state and the name of its resident agent in charge of the registered office; and for service of process required to be maintained by this act;~~

~~(9) (6) the date on which the corporation commenced, or intends to commence, doing business in this state; and~~

~~(7) an irrevocable written consent of the foreign corporation that actions may be commenced against it in the proper court of any county where there is proper venue by service of process on the secretary of state as provided for in K.S.A. 60-304, and amendments thereto, and stipulating and agreeing that such service shall be taken and held, in all courts, to be as valid and binding as if due service had been made upon an officer of the corporation.~~

The application shall be subscribed and sworn to by the president or a vice president and the secretary or an assistant secretary of the corporation, and it shall be accompanied by the written consent of the corporation, irrevocable, that actions may be commenced against it in the proper court of any county where there is proper venue by the service of process on the secretary of state as provided for in K.S.A. 17-7307 and amendments thereto and stipulating and agreeing that such service shall be taken and held, in all courts, to be as valid and binding as if due service had been made upon the president and secretary of the corporation. Such consent shall be executed by the president or a vice president and the secretary or an assistant secretary of the corporation and shall be accompanied by a duly certified copy of the order or resolution of the board of directors, trustees or managers of the corporation authorizing the secretary or an assistant secretary and the president or a vice president to execute it ~~executed and filed in accordance with K.S.A. 17-6003, and amendments thereto.~~

(c) After receipt of the application and fee, if the secretary of state finds that it complies with the provisions of this section, the secretary of state shall file record the original application and certify the duplicate copy return the original, certified in accordance with K.S.A. 17-6003, and amendments thereto. The certified copy of the application shall be prima facie evidence of the right of the corporation to do business in this state. The secretary of state shall not file such application unless:

(1) The name of the corporation is such as to distinguish it upon the records of the office of the secretary of state from the name of each any other corporation, *limited liability company or limited partnership* organized under the laws of this state or reserved or registered as a foreign corporation, *limited liability company or limited partnership* under the laws of this state;

(2) the corporation has obtained the written consent of such other corporation entity, which has the same name, ~~for the corporation to do business in this state under such name and such consent has been executed and filed with the secretary of state in accordance with K.S.A. 17-6003 and amendments thereto;~~ or

(3) the corporation indicates, as a means of identification and in its advertising within this state, the state in which it is incorporated.

Sec. 79. K.S.A. 2003 Supp. 17-7302 is hereby amended to read as follows: 17-7302. (a) Whenever any foreign corporation admitted to do business in this state is a party to a merger or consolidation with any other foreign corporation, whether or not admitted to do business in this state, the resident agent of such foreign corporation shall file with the secretary of state of this state, within 30 days after the time the merger or consolidation becomes effective, a certificate of the proper officer of the jurisdiction under the laws of which the merger or consolidation was effected, attesting to such merger or consolidation and stating:

(1) The corporate parties thereto;

(2) the time when such merger or consolidation became effective; and

(3) that the resulting or surviving corporation is a corporation in good standing in such jurisdiction.

(b) Upon the written request of any person and the payment of a fee of \$25, the resident agent of any foreign corporation admitted to do busi-

ness in this state shall furnish such person with a copy of the articles of incorporation of such corporation which are then in effect, within 30 days after such request. If the resident agent does not furnish the articles of incorporation within the prescribed time, the person requesting a copy thereof may apply to the secretary of state for an order directing the resident agent to furnish such person with a copy of the articles of incorporation within 30 days of the date of the order. Upon such application being made, the secretary of state shall issue the order, and if the resident agent fails to comply therewith, the right of such foreign corporation to do business in this state shall be forfeited.

—(c) Whenever any foreign corporation admitted to do business in this state shall amend its articles of incorporation in a manner which affects any of the information contained on such corporation's application to do business in Kansas, the resident agent of such corporation shall file with the secretary of state, within 30 days after the amendment is adopted, a certificate of the proper officer of the jurisdiction in which such corporation has been incorporated attesting to such amendment. *In the alternative*, any foreign corporation may amend its original application for authority to do business in Kansas by *filing a certificate of amendment* certifying that such amendment has been duly adopted, ~~and by executing and filing the same~~ and *executed* in accordance with K.S.A. 17-6003 and amendments thereto.

Sec. 80. K.S.A. 17-7303 is hereby amended to read as follows: 17-7303. ~~Every foreign corporation that has an office or place of business within this state, or a distributing point herein, or that delivers its wares or products to resident agents in this state for sale, delivery or distribution, shall be held to be doing business in this state within the meaning of this act. Provided, That foreign corporations shall have the right to receive, take, purchase and hold, by mortgage or otherwise, any securities or liens executed, given, transferred or intended to represent or secure loans upon real or personal property situated in this state, and to sell, assign, transfer, sue upon, foreclose or otherwise enforce the same; and any foreign corporation which engages in Kansas solely and exclusively in the activities enumerated in this proviso shall not be required to obtain authority under this act to engage in such activities in this state. (a) Activities of a foreign corporation which do not constitute doing business within the meaning of K.S.A. 17-7301, and amendments thereto, include:~~

- (1) *Maintaining, defending or settling an action or proceeding;*
  - (2) *holding meetings or carrying on any other activity concerning its internal affairs;*
  - (3) *maintaining bank accounts;*
  - (4) *maintaining offices or agencies for the transfer, exchange and registration of the corporation's own securities or maintaining trustees or depositories with respect to those securities;*
  - (5) *selling through independent contractors;*
  - (6) *soliciting or obtaining orders, whether by mail or electronic commerce or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts;*
  - (7) *creating or acquiring indebtedness, mortgages or security interests in real or personal property;*
  - (8) *securing or collecting debts or foreclosing mortgages or other security interests in property securing the debts, and holding, protecting and maintaining property so acquired;*
  - (9) *conducting an isolated transaction that is completed within 30 days and is not one in the course of similar transactions of like nature; and*
  - (10) *transacting business in interstate commerce.*
- (b) *The ownership in this state of income producing real property or tangible personal property, other than property excluded under subsection (a), constitutes transacting business in this state.*
- (c) *This section does not apply in determining the contacts or activities that may subject a foreign corporation to service of process, taxation or regulation under any other law of this state.*

Sec. 81. K.S.A. 17-7304 is hereby amended to read as follows: 17-7304. (a) Any foreign corporation, ~~which that~~ has qualified to do business in this state may change its registered office or resident agent in the manner prescribed by K.S.A. 17-6203, *and amendments thereto.*

(b) Any individual or corporation designated by a foreign corporation as its resident agent for service of process may resign pursuant to the

provisions of K.S.A. 17-6205 or 17-6206, *and amendments thereto*.

(c) A resident agent may change the address of the corporation's registered office in the manner prescribed by K.S.A. 17-6204, *and amendments thereto*.

Sec. 82. K.S.A. 2003 Supp. 17-7306 is hereby amended to read as follows: 17-7306. (a) Any foreign corporation which shall have qualified to do business in this state under the provisions of K.S.A. 17-7301, and amendments thereto, may surrender its authority to do business in this state and may withdraw therefrom by filing with the secretary of state:

(1) ~~A certificate signed by its president or a vice president and attested by its secretary or an assistant secretary executed in accordance with K.S.A. 17-6003, and amendments thereto, stating that it surrenders its authority to transact business in the state of Kansas and withdraws therefrom; and stating the address to which the secretary of state may mail any process against the corporation that may be served upon the secretary of state; or~~

(2) a copy of a certificate of dissolution issued by the proper official of the state or other jurisdiction of its incorporation, certified to be a true copy under the hand and official seal of the official, together with a certificate, which shall be executed in accordance with ~~paragraph (1) of this subsection~~ K.S.A. 17-6003, *and amendments thereto*, stating the address to which the secretary of state may mail any process against the corporation that may be served upon the secretary of state; or

(3) a copy of an order or decree of dissolution made by any court of competent jurisdiction or other competent authority of the state or other jurisdiction of its incorporation, certified to be a true copy under the hand of the clerk of the court or other official body, ~~and the official seal of the court or official body or clerk thereof~~, together with a certificate executed in accordance with ~~paragraph (1) of this subsection~~ K.S.A. 17-6003, *and amendments thereto*, stating the address to which the secretary of state may mail any process against the corporation that may be served upon the secretary of state.

The documents evidencing the withdrawal may be filed by telefacsimile communication as prescribed by K.S.A. 17-6003a, and amendments thereto.

(b) ~~The secretary of state~~, Upon payment to the secretary of state of any required fees, ~~shall file the secretary of state shall record~~ the certificate of withdrawal and ~~certify a duplicate copy return the original, certified~~, evidencing the surrender of the authority of the corporation to do business in this state and its withdrawal therefrom.

(c) Upon the filing of the certificate by the secretary of state, the appointment of the resident agent of the corporation in this state, ~~upon whom process against the corporation may be served~~, shall be revoked, and the corporation shall be deemed to have consented that service of process in any action, suit or proceeding based upon any cause of action arising in this state, during the time the corporation was authorized to transact business in this state, may thereafter be made by service upon the secretary of state in the manner prescribed by K.S.A. 60-304, and amendments thereto.

Sec. 83. K.S.A. 2003 Supp. 17-7503 is hereby amended to read as follows: 17-7503. (a) Every domestic corporation organized for profit shall make an annual report in writing to the secretary of state, stating the prescribed information concerning the corporation at the close of business on the last day of its tax period next preceding the date of filing, but if a corporation's tax period is other than the calendar year, it shall give notice thereof to the secretary of state prior to December 31 of the year it commences such tax period. The reports shall be made on forms prescribed by the secretary of state. The report shall be filed at the time prescribed by law for filing the corporation's annual Kansas income tax return, except that if any such corporation shall apply for an extension of time for filing its annual income tax return under the internal revenue service or under subsection (c) of K.S.A. 79-3221, and amendments thereto, such corporation shall also apply, not more than 90 days after the due date of its annual report, to the secretary of state for an extension of the time for filing the report and an extension shall be granted for a period of time corresponding to that granted under the internal revenue code or K.S.A. 79-3221, and amendments thereto. Such application shall include a copy of the *extension* application ~~to~~ *filed with the* income tax authorities. The report shall contain the following information:

- (1) The name of the corporation;
- (2) the location of the principal office;
- (3) the names *and addresses* of the president, secretary, treasurer *or equivalent of such officers* and members of the board of directors, ~~with the residence address of each;~~
- (4) the number of shares of capital stock ~~issued and the amount of capital stock paid up~~ *and the par value per share of each class of capital stock having a par value and the number of shares of each class of stock without par value which the corporation is authorized to issue;*
- (5) *the number of shares of capital stock issued;*
- (6) the nature and kind of business in which the corporation is engaged, ~~and;~~ *and*
- (7) *if the corporation is a parent corporation holding more than 50% equity ownership in any other business entity registered with the secretary of state, the name and identification number of any such subsidiary business entity.*

~~(6) a list of stockholders owning at least 5% of the capital stock of the corporation, with the post office address of each.~~

(b) Every corporation subject to the provisions of this section which holds agricultural land, as defined in K.S.A. 17-5903, and amendments thereto, within this state shall show the following additional information on the report:

- (1) The acreage and location listed by section, range, township and county of each lot, tract or parcel of agricultural land in this state owned or leased by or to the corporation;
- (2) the purposes for which such agricultural land is owned or leased and, if leased, to whom such agricultural land is leased;
- (3) the value of the nonagricultural assets and the agricultural assets, stated separately, owned and controlled by the corporation both within and without the state of Kansas and where situated;
- (4) the total number of stockholders of the corporation;
- (5) the number of acres owned or operated by the corporation, the number of acres leased by the corporation and the number of acres leased to the corporation;
- (6) the number of acres of agricultural land, held and reported in each category under provision (5), state separately, being irrigated; and
- (7) whether any of the agricultural land held and reported under this subsection was acquired after July 1, 1981.

(c) The report shall be ~~signed by its president, secretary, treasurer or other officer duly authorized so to act, or by any two of its directors, or by an incorporator in the event its board of directors shall not have been elected~~ *executed in accordance with the provisions of K.S.A. 17-6003, and amendments thereto.* The fact that an individual's name is signed on such report shall be prima facie evidence that such individual is authorized to sign the report on behalf of the corporation; however, the official title or position of the individual signing the report shall be designated. This report ~~will~~ *shall* be dated and subscribed by the person as true, under penalty of perjury.

(d) At the time of filing such annual report it shall be the duty of each domestic corporation organized for profit to pay to the secretary of state an annual franchise tax in an amount equal to \$2 for each \$1,000 of the corporation's shareholder's equity attributable to Kansas, except that no such tax shall be less than \$40 or more than \$5,000. The amount of any such franchise tax paid by the corporation to the secretary as provided by this subsection shall not be disclosed by the secretary.

Sec. 84. K.S.A. 2003 Supp. 17-7504 is hereby amended to read as follows: 17-7504. (a) Every corporation organized not for profit shall make an annual report in writing to the secretary of state, stating the prescribed information concerning the corporation at the close of business on the last day of its tax period next preceding the date of filing, but if a corporation's tax period is other than the calendar year, it shall give notice thereof to the secretary of state prior to December 31 of the year it commences such tax period. The reports shall be made on forms prescribed by the secretary of state. The report shall be filed on the 15th day of the sixth month following the close of the taxable year, except that such corporation may apply to the secretary of state not more than 90 days after the due date of its annual report for an extension of the time for filing the report, and an extension shall be granted for a period of time corresponding to that granted under the internal revenue code or K.S.A.

79-3221, and amendments thereto. The report shall contain the following information:

- (1) The name of the corporation;
- (2) the location of the principal office;
- (3) the names *and addresses* of the president, secretary and treasurer, *or equivalent of such officers*, and the members of the ~~board of directors,~~ *with the residence address of each governing body*;
- (4) the number of memberships or the number of shares of capital stock *authorized and issued and the amount of capital stock paid up; and*
- (5) *if the corporation is a parent corporation holding more than 50% equity ownership in any other business entity registered with the secretary of state, the name and identification number of any such subsidiary business entity.*

(b) Every corporation subject to the provisions of this section which holds agricultural land, as defined in K.S.A. 17-5903, and amendments thereto, within this state shall show the following additional information on the report:

- (1) The acreage and location listed by section, range, township and county of each lot, tract or parcel of agricultural land in this state owned or leased by or to the corporation;
- (2) the purposes for which such agricultural land is owned or leased and, if leased, to whom such agricultural land is leased;
- (3) the value of the nonagricultural assets and the agricultural assets, stated separately, owned and controlled by the corporation both within and without the state of Kansas and where situated;
- (4) the total number of stockholders *or members* of the corporation;
- (5) the number of acres owned or operated by the corporation, the number of acres leased by the corporation and the number of acres leased to the corporation;
- (6) the number of acres of agricultural land, held and reported in each category under paragraph (5) of this subsection (b), stated separately, being irrigated; and
- (7) whether any of the agricultural land held and reported under this subsection was acquired after July 1, 1981.

(c) The report shall be ~~signed by its president, secretary, treasurer or other officer duly authorized so to act, or by any two of its directors, or by an incorporator in the event its board of directors shall not have been elected~~ *executed in accordance with the provisions of K.S.A. 17-6003, and amendments thereto.* The fact that an individual's name is signed on such report shall be prima facie evidence that such individual is authorized to sign the report on behalf of the corporation; however, the official title or position of the individual signing the report shall be designated. This report ~~will~~ *shall* be dated and subscribed by the person as true, under penalty of perjury.

(d) At the time of filing such report, each nonprofit corporation shall pay an annual privilege fee of \$40 for all tax years commencing after December 31, 2001.

Sec. 85. K.S.A. 2003 Supp. 17-7505 is hereby amended to read as follows: 17-7505. (a) Every foreign corporation organized for profit, or organized under the cooperative type statutes of the state, territory or foreign country of incorporation, now or hereafter doing business in this state, and owning or using a part or all of its capital in this state, and subject to compliance with the laws relating to the admission of foreign corporations to do business in Kansas, shall make an annual report in writing to the secretary of state, stating the prescribed information concerning the corporation at the close of business on the last day of its tax period next preceding the date of filing, but if a corporation operates on a fiscal year other than the calendar year it shall give written notice thereof to the secretary of state prior to December 31 of the year commencing such fiscal year. The report shall be made on a form prescribed by the secretary of state. The report shall be filed at the time prescribed by law for filing the corporation's annual Kansas income tax return, except that if any such corporation shall apply for an extension of time for filing its annual income tax return under the internal revenue service or under subsection (c) of K.S.A. 79-3221, and amendments thereto, such corporation shall also apply, not more than 90 days after the due date of its annual report, to the secretary of state for an extension of the time for filing the report and an extension shall be granted for a period of time corresponding to that granted under the internal revenue code or K.S.A.

79-3221, and amendments thereto. Such application shall include a copy of the *extension application to be filed with the income tax authorities*. The report shall contain the following facts:

(1) The name of the corporation and under the laws of what state or country ~~organized it is incorporated;~~

(2) the location of its principal office;

(3) the names *and addresses* of the president, secretary, treasurer, *or equivalent of such officers*, and members of the board of directors, ~~with the residence address of each;~~

(4) the number of shares of capital stock ~~issued and the amount of capital stock paid up and the par value per share of each class of capital stock having a par value and the number of shares of each class of stock without par value which the corporation is authorized to issue;~~

(5) *the number of shares of capital stock issued;*

(6) the nature and kind of business in which the company is engaged ~~and its place or places of business both within and without the state of Kansas;~~

~~(6) the value of the property owned and used by the company in Kansas, where situated, and the value of the property owned and used outside of Kansas and where situated; and~~

~~(7) the corporation's shareholder's equity attributable to Kansas; and~~

(7) *if the corporation is a parent corporation holding more than 50% equity ownership in any other business entity registered with the secretary of state, the name and identification number of any such subsidiary business entity.*

(b) Every corporation subject to the provisions of this section which holds agricultural land, as defined in K.S.A. 17-5903, and amendments thereto, within this state shall show the following additional information on the report:

(1) The acreage and location listed by section, range, township and county of each lot, tract or parcel of agricultural land in this state owned or leased by or to the corporation;

(2) the purposes for which such agricultural land is owned or leased and, if leased, to whom such agricultural land is leased;

(3) the value of the nonagricultural assets and the agricultural assets, stated separately, owned and controlled by the corporation both within and without the state of Kansas and where situated;

(4) the total number of stockholders of the corporation;

(5) the number of acres owned or operated by the corporation, the number of acres leased by the corporation and the number of acres leased to the corporation;

(6) the number of acres of agricultural land, held and reported in each category under paragraph (5) of this subsection (b), stated separately, being irrigated; and

(7) whether any of the agricultural land held and reported under this subsection was acquired after July 1, 1981.

(c) The report shall be ~~signed by its president, secretary, treasurer or other officer duly authorized so to act, or by any two of its directors, or by an incorporator in the event its board of directors shall not have been elected~~ *executed in accordance with the provisions of K.S.A. 17-6003, and amendments thereto*. The fact that an individual's name is signed on such report shall be prima facie evidence that such individual is authorized to sign the report on behalf of the corporation; however, the official title or position of the individual signing the report shall be designated. This report will be dated and subscribed by the person as true, under penalty of perjury.

(d) At the time of filing its annual report, each such foreign corporation shall pay to the secretary of state an annual franchise tax in an amount equal to \$2 for each \$1,000 of the corporation's shareholder's equity attributable to Kansas, except that no such tax shall be less than \$40 or more than \$5,000. The amount of any such franchise tax paid by the foreign corporation to the secretary as provided by this subsection shall not be disclosed by the secretary.

Sec. 86. K.S.A. 2003 Supp. 17-7506 is hereby amended to read as follows: 17-7506. (a) The secretary of state shall charge each ~~domestic and foreign~~ corporation a fee ~~of \$20 established pursuant to rules and regulations, but not exceeding \$250, for issuing or filing and indexing any of the corporate documents described below:~~

~~(1) Restated articles of incorporation; of a for-profit or a foreign cor-~~

poration application.

(b) *The secretary of state shall charge each corporation a fee established by rules and regulations, but not exceeding \$50, for articles of incorporation of a nonprofit corporation.*

(c) *The secretary of state shall charge each corporation a fee established by rules and regulations, but not exceeding \$150, for issuing or filing and indexing any of the corporate documents described below:*

~~(2)~~ (1) Certificate of extension, restoration, renewal or revival of articles of incorporation;

~~(3)~~ (2) certificate of amendment of articles of incorporation, either prior to or after payment of capital;

~~(4)~~ (3) certificate of designation of preferences;

~~(5)~~ (4) certificate of retirement of preferred stock;

~~(6)~~ (5) certificate of increase or reduction of capital;

~~(7)~~ (6) certificate of dissolution, either prior to or after beginning business;

~~(8)~~ (7) certificate of revocation of voluntary dissolution;

~~(9)~~ (8) certificate of change of location of registered office and resident agent;

~~(10)~~ (9) agreement of merger or consolidation;

~~(11)~~ (10) certificate of ownership and merger;

~~(12)~~ (11) certificate of extension, restoration, renewal or revival of a certificate of authority of foreign corporation to do business in Kansas;

~~(13)~~ (12) change of resident agent or amendment by foreign corporation;

~~(14)~~ (13) certificate of withdrawal of foreign corporation;

~~(15)~~ (14) certificate of correction of any of the instruments designated in this section;

~~(16)~~ (15) reservation of corporate name; and

~~(17) any other certificate for which a filing or indexing fee is not prescribed by law.~~

(16) *restated articles of incorporation; and*

(17) *annual report extension.*

(d) *The secretary of state shall charge each corporation a fee established pursuant to rules and regulations but not exceeding \$50 for issuing certified copies, photocopies, letters of good standing, certificates of good standing and certificates of fact; and any other certificate or filing for which a filing or indexing fee is not prescribed by law.*

~~(b) Except as hereinafter provided, the~~

(e) *The secretary of state shall not charge fees for the documents or services described below:*

~~(1) Certified copies, \$7.50 for each copy certified plus a fee per page if the secretary of state supplies the copies in an amount fixed by the secretary of state and approved by the director of accounts and reports under K.S.A. 45-204, and amendments thereto, the fee for each certificate of good standing and certificate of fact issued by the secretary of state shall be \$7.50;~~

~~(2) For a report of record search, \$5, but furnishing the following information shall not be considered a record search and no charge shall be made therefor for providing the following information: Name of the corporation and address of its registered office; name and address and the name of its resident agent; the amount of its authorized capital stock; the state of its incorporation; date of filing of articles of incorporation, certificate of good standing foreign corporation application or annual report; and date of expiration; and~~

~~(3) For photocopies of instruments on file in or prepared by the secretary of state's office and which are not certified, a fee per page in an amount fixed by the secretary of state and approved by the director of accounts and reports under K.S.A. 45-204, and amendments thereto.~~

(f) *The secretary of state shall prescribe by rules and regulations any fees required by this act.*

Sec. 87. K.S.A. 2003 Supp. 17-7507 is hereby amended to read as follows: 17-7507. No corporation shall be required to file its first annual report under this act, or pay any annual franchise tax required to accompany such report, unless such corporation has filed its articles of incorporation or certificate of good standing foreign corporation application at least six months prior to the last day of its tax period. If any corporation shall file with the secretary of state a notice of change in its tax period, and the next annual report filed by such corporation subsequent to such



notice is based on a tax period of less than 12 months, the annual tax liability shall be determined by multiplying the annual franchise tax liability for such year by a fraction the numerator of which is the number of months, or any portion thereof, covered by the annual report and the denominator of which is 12. Notwithstanding the foregoing, the minimum annual franchise tax shall be \$40.

Sec. 88. K.S.A. 2003 Supp. 17-7508 is hereby amended to read as follows: 17-7508. All taxes paid pursuant to the provisions of this act shall be rounded off to the nearest \$1, and unless other disposition is specifically provided by law, the taxes collected under the provisions of this act and all overpayments which may not be refunded under this section shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the state general fund. The secretary of state shall not refund any overpayment of franchise taxes which is equal to ~~\$1~~ \$5 or less, shall not credit any domestic corporation or foreign corporation with any amount which may not be refunded under this section, and shall not require reimbursement for any underpayment of franchise taxes which is less than ~~\$1~~ \$5. No refund shall be allowed by the secretary of state after three years from the date prescribed by law for filing the report, ~~provided it was filed before the due date, unless a refund is requested before the expiration of such period a claim therefor is filed by the taxpayer.~~ If the report was filed after the due date, a refund claim ~~must~~ shall be filed not later than three years from the time the report was actually filed.

Sec. 89. K.S.A. 17-7510 is hereby amended to read as follows: 17-7510. (a) In addition to any other penalties, the failure of any domestic corporation to file the annual report in accordance with the provisions of this act or to pay the annual taxes herein provided for within 90 days of the time for filing and paying the same shall work the forfeiture of the articles of incorporation of such domestic corporation. Within 60 days after the date such annual report and taxes are due, the secretary of state, by mail, shall notify any corporation that has failed to submit such report and taxes when due that its articles of incorporation shall be forfeited unless the annual report is filed and the taxes thereon are paid within 90 days from the date such report and taxes were due. Any corporation that fails to submit such report and taxes within such time shall forfeit its articles of incorporation, and the secretary of state shall notify the attorney general that the articles of incorporation of such corporation have been forfeited.

(b) In addition to any other penalties, the failure of any foreign corporation to file the annual report or pay the annual franchise taxes prescribed by this act within 90 days from the time provided for filing and paying the same shall work a forfeiture of its right or authority to do business in this state. Within 60 days after the date such annual report and taxes are due, the secretary of state, by mail, shall notify any corporation that has failed to submit such report and taxes when due that its authority to do business in this state shall be forfeited unless the annual report and taxes thereon are paid within 90 days from the date such report and taxes were due. Any corporation that fails to submit such report and taxes within such time shall forfeit its authority to do business in this state, and the secretary of state shall publish a notice of such forfeiture in the Kansas register.

This section shall not be construed to restrict the state from invoking any other remedies provided by law.

(c) *The secretary of state shall not issue certificates of good standing for any corporation that has failed to pay its franchise taxes.*

Sec. 90. K.S.A. 17-7512 is hereby amended to read as follows: 17-7512. The provisions of this act relating to the filing of annual reports and the payment of franchise taxes shall not apply to banking, insurance or savings and loan corporations ~~or associations or to~~, credit unions ~~or~~, any firemen's relief association under the jurisdiction and supervision of the insurance commissioner ~~or to~~, Kansas Venture Capital, Inc., or ~~to~~ venture capital companies certified by the secretary of commerce pursuant to article 83 of chapter 74 of the Kansas Statutes Annotated and amendments thereto.

Sec. 91. K.S.A. 17-7514 is hereby amended to read as follows: 17-7514. (a) Whenever any corporation, ~~professional corporation, limited~~

~~partnership, business trust or other business entity which is required to file an annual report with the secretary of state in accordance with the provisions of K.S.A. 17-2036, 17-2718, 17-7503, 17-7504, 17-7505, 56-1a606 or 56-1a607, and amendments thereto; shall apply for an extension of time for filing its annual income tax return from the internal revenue service, the time for filing the annual report with the secretary of state shall be extended, correspondingly, upon filing with the secretary of state, prior to the due date of its annual report, a copy of the application to income tax authorities. All such copies of applications for extension of the time for filing income tax returns filed on or after December 31, 1978, shall be maintained by the secretary of state in a confidential file and shall not be disclosed to any person except as authorized pursuant to the provisions of K.S.A. 79-3234 and amendments thereto and subsection (c) of this section. All copies of such applications shall be preserved for one year and thereafter until the secretary of state orders that they be destroyed.~~

~~(b) Except in accordance with subsection (c) of this section or a proper judicial order, it shall be unlawful for the secretary of state or any other officer, employee, former officer or former employee of this state to disclose any information contained in copies of federal extensions of time to file income tax returns. Nothing in this section shall be deemed to prohibit the secretary of state or any officer or employee of the office of secretary of state from issuing any of the corporate documents described in K.S.A. 17-7506 and amendments thereto or any document described in K.S.A. 56-1a605 and amendments thereto concerning a limited partnership.~~

~~(c) All copies of such applications shall be open to inspection by or disclosure to: (1) ~~In the case of a corporation~~ (i) Any person designated by resolution of the corporation's board of directors or other similar governing body; (ii) (2) any officer or employee of such corporation upon written request signed by any principal officer and attested to by the secretary or other officer; or (iii) (3) any bona fide shareholder of record owning 100 or more shares or 1% or more of the outstanding stock of such corporation; (2) ~~in the case of any limited partnership, any person who was a member of such partnership during any part of the period covered by the extension,~~ (3) ~~in the case of any business trust, any person designated by resolution of the trustees of the business trust, and (4) in the case of a limited liability company, any person who was a member of such company during any part of the period covered by the extension.~~~~

~~(d) Any violation of subsection (b) is a class B nonperson misdemeanor.~~

New Sec. 92. (a) Without limiting the manner by which notice otherwise may be given effectively to stockholders, any notice to stockholders given by the corporation under any provision of this chapter, the articles of incorporation or the bylaws shall be effective if given by a single written notice to stockholders who share an address if consented to by the stockholders at that address to whom such notice is given. Any such consent shall be revocable by the stockholder by written notice to the corporation.

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

(c) This section shall apply to a corporation organized under this chapter that is not authorized to issue capital stock, and when so applied, all references to stockholders shall be deemed to refer to members of such a corporation.

(d) This section shall not apply to K.S.A. 17-6414, 17-6906, 17-7001, and 17-7002, and amendments thereto.

(e) This section shall be part of and supplemental to the Kansas general corporation code, and amendments thereto.

Sec. 93. K.S.A. 2003 Supp. 17-2036 is hereby amended to read as follows: 17-2036. (a) Every business trust shall make an annual report in writing to the secretary of state, showing its financial condition at the close of business on the last day of its tax period under the Kansas income tax act next preceding the date of filing, but if a business trust's tax period is other than the calendar year, it shall give notice thereof to the secretary of state prior to December 31 of the year it commences such tax period. The reports shall be made on forms provided by the secretary of state and shall be filed at the time prescribed by law for filing the business trust's annual Kansas income tax return, except that if any such business

trust shall receive an extension of time for filing its annual income tax return from the internal revenue service or pursuant to subsection (c) of K.S.A. 79-3221, and amendments thereto, the time for filing the report hereunder shall be extended, correspondingly, upon filing with the secretary of state a copy of the extension granted by the internal revenue service or the director of taxation. The report shall contain the following:

~~(a)~~ (1) Executed copies of all amendments to the instrument by which the business trust was created, or to prior amendments thereto, which have been adopted and have not theretofore been filed under K.S.A. 17-2033, and amendments thereto, and accompanied by the fee prescribed therein for each such amendment; *and*

~~(b)~~ (2) a verified list of the names and addresses of its trustees as of the end of its tax period; *and*

~~(c) a balance sheet as of the end of its tax period, certified by the trustee, fairly and truly reflecting its assets and liabilities and specifically setting out its corpus, and, in the case of a foreign business trust, fairly and truly reflecting an allocation of its moneys and other assets as between those located, used, or to be used in this state and those located, used or to be used elsewhere.~~

(b) (1) At the time of filing its annual report, the business trust shall pay to the secretary of state an annual franchise tax in an amount equal to \$2 for each \$1,000 of its corpus ~~as shown by its balance sheet~~, or, in the case of a foreign business trust, in an amount equal to \$2 for each \$1,000 of that portion of its corpus which is located in or which it uses or intends to use in this state ~~as shown by its balance sheet~~, except that in any case no such tax shall be less than \$40 nor more than \$5,000.

(2) The failure of any domestic or foreign business trust to file its annual report and pay its annual franchise tax within 90 days from the date on which they are due, as aforesaid, shall work a forfeiture of its authority to transact business in this state and all of the remedies, procedures, and penalties specified in K.S.A. 17-7509 and 17-7510, and amendments thereto, with respect to a corporation which fails to file its annual report or pay its annual franchise tax within 90 days after they are due, shall be applicable to such business trust.

(c) *When any business trust that is required to file an annual report with the secretary of state, applies for an extension of time for filing its annual income tax return with the internal revenue service, the time for filing the annual report with the secretary of state shall be extended, correspondingly, upon filing a copy of the application to income tax authorities with the secretary of state, prior to the due date of its annual report. All such copies of applications for extension of the time for filing income tax returns shall be maintained by the secretary of state in a confidential file and shall not be disclosed to any person except as authorized pursuant to the provisions of K.S.A. 79-3234 and amendments thereto, a proper judicial order, and subsection (d). All copies of such applications shall be preserved for one year and until the secretary of state orders that the copies are to be destroyed.*

(d) *A copy of such application shall be open to inspection by or disclosure to any person designated by resolution of the trustees of the business trust.*

Sec. 94. K.S.A. 2003 Supp. 17-7678 is hereby amended to read as follows: 17-7678. (a) The original signed copy, ~~together with a duplicate copy which may be either a signed or conformed copy,~~ of articles of organization or any certificate to be filed pursuant to this act, shall be filed with the secretary of state. A person who executes a certificate, statement or articles as an agent or fiduciary shall not be required to exhibit evidence of the person's authority as a prerequisite to filing. Any signature on any articles or certificate authorized to be filed with the secretary of state under any provision of this act may be a facsimile, a conformed signature or an electronically transmitted signature. Unless the secretary of state finds that any filing does not conform to law, upon receipt of all filing fees required by law, the secretary of state shall:

(1) Certify that such document has been filed in the secretary of state's office by endorsing upon the original filing the word "filed" and the date and hour of the filing; in the absence of actual fraud, this endorsement is conclusive of the date and time of its filing;

(2) ~~file and index~~ record the endorsed document *in an electronic medium*; and

(3) return the ~~duplicate copy, similarly~~ original document, certified

as a true copy of the recorded document, to the person who filed it or such person's representative.

(b) The articles of organization shall be amended as provided in a certificate of amendment ~~(or judicial decree of amendment)~~ upon the filing of the certificate of amendment ~~(or judicial decree of amendment)~~ with the secretary of state or upon the future effective date specified in the certificate of amendment. An inaccuracy in the articles of organization may be corrected by filing a certificate of correction with the secretary of state as provided in K.S.A. 2003 Supp. 17-7683, and amendments thereto. The articles of organization are canceled upon the issuance of a certificate of cancellation ~~(or certificate of merger or consolidation where the limited liability company is not the surviving or resulting entity)~~ by the secretary of state.

(c) The fee required by this act shall be paid at the time of the filing of any articles of organization or any certificate to be filed pursuant to this act.

(d) The fee required by this act shall be paid for a certified copy of any paper on file pursuant to this act and the fee fixed pursuant to this act shall be paid for each page copied.

(e) The secretary of state may prescribe a telefacsimile communication fee in addition to any filing fees to cover the cost of such services. This fee must be paid prior to acceptance of a telefacsimile communication and shall be deposited into the information and copy service fee fund.

(f) Upon filing the articles of organization of a limited liability company organized to exercise powers of a professional association or professional corporation, the limited liability company shall file with the secretary of state a certificate by the licensing body, as defined in K.S.A. 74-146, and amendments thereto, of the profession involved that each of the members is duly licensed to practice that profession, and that the proposed company name has been approved.

Sec. 95. K.S.A. 2003 Supp. 17-76,121 is hereby amended to read as follows: 17-76,121. Before doing business in the state of Kansas, a foreign limited liability company shall register with the secretary of state. In order to register, a foreign limited liability company shall submit to the secretary of state, together with payment of the fee required by this act, an original copy executed by a member or manager, together with a duplicate copy, of an application for registration as a foreign limited liability company, setting forth:

(a) The name of the foreign limited liability company;

(b) the state or other jurisdiction or country where organized, the date of its organization and a statement issued by an appropriate authority in that jurisdiction *or by a third-party agent authorized by the secretary of state* that the foreign limited liability company exists in good standing under the laws of the jurisdiction of its organization;

(c) the nature of the business or purposes to be conducted or promoted in the state of Kansas;

(d) the address of the registered office and the name and address of the resident agent for service of process required to be maintained by this act;

(e) an irrevocable written consent of the foreign limited liability company that actions may be commenced against it in the proper court of any county where there is proper venue by the service of process on the secretary of state as provided for in K.S.A. 60-304, and amendments thereto, and stipulating and agreeing that such service shall be taken and held, in all courts, to be as valid and binding as if due service had been made upon the general partners of the foreign limited liability company;

(f) the name and business, residence or mailing address of each of the members or, if managed by managers, the name and business, residence or mailing address of each of the managers; and

(g) the date on which the foreign limited liability company first did, or intends to do, business in the state of Kansas.

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

Sec. 96. K.S.A. 2003 Supp. 17-76,139 is hereby amended to read as follows: 17-76,139. (a) Every limited liability company organized under the laws of this state shall make an annual report in writing to the secretary of state, stating the prescribed information concerning the limited liability

company at the close of business on the last day of its tax period next preceding the date of filing. If the limited liability company's tax period is other than the calendar year, it shall give notice of its different tax period in writing to the secretary of state prior to December 31 of the year it commences the different tax period. The annual report shall be filed at the time prescribed by law for filing the limited liability company's annual Kansas income tax return. If the limited liability company applies for an extension of time for filing its annual income tax return under the internal revenue code, the limited liability company shall also apply, not more than 90 days after the due date of its annual report, to the secretary of state for an extension of the time for filing its report and an extension shall be granted for a period of time corresponding to that granted under the internal revenue code. The application shall include a copy of the application to income tax authorities. The annual report shall be made on a form prescribed by the secretary of state. The report shall contain the following information:

- (1) The name of the limited liability company; and
- (2) a list of the members owning at least 5% of the capital of the company, with the post office address of each.

(b) Every foreign limited liability company shall make an annual report in writing to the secretary of state, stating the prescribed information concerning the limited liability company at the close of business on the last day of its tax period next preceding the date of filing. If the limited liability company's tax period is other than the calendar year, it shall give notice in writing of its different tax period to the secretary of state prior to December 31 of the year it commences the different tax period. The annual report shall be filed at the time prescribed by law for filing the limited liability company's annual Kansas income tax return. If the limited liability company applies for an extension of time for filing its annual income tax return under the internal revenue code, the limited liability company also shall apply, not more than 90 days after the due date of its annual report, to the secretary of state for an extension of the time for filing its report and an extension shall be granted for a period of time corresponding to that granted under the internal revenue code. The application shall include a copy of the application to income tax authorities. The annual report shall be made on a form prescribed by the secretary of state. The report shall contain the name of the limited liability company.

(c) The annual report required by this section shall be signed by a member of the limited liability company and forwarded to the secretary of state. At the time of filing the report, the limited liability company shall pay to the secretary of state an annual franchise tax in an amount equal to \$2 for each \$1,000 of the net capital accounts located in or used in this state at the end of the preceding taxable year as required to be reported on the federal partnership return of income, or for a one-member LLC taxed as a sole proprietorship, \$2 for each \$1,000 of net book value of the LLC as calculated on an income tax basis located in or used in this state at the end of the preceding taxable year, except that no annual tax shall be less than \$40 or more than \$5,000. The amount of any such franchise tax paid by the limited liability company to the secretary as provided by this subsection shall not be disclosed by the secretary.

(d) The provisions of K.S.A. 17-7509, and amendments thereto, relating to penalties for failure of a corporation to file an annual report or pay the required franchise tax, and the provisions of subsection (a) of K.S.A. 17-7510 and amendments thereto, relating to penalties for failure of a corporation to file an annual report or pay the required franchise tax, shall be applicable to the articles of organization of any domestic limited liability company or to the authority of any foreign limited liability company which fails to file its annual report or pay the franchise tax within 90 days of the time prescribed in this section for filing and paying the same. Whenever the articles of organization of a domestic limited liability company or the authority of any foreign limited liability company are forfeited for failure to file an annual report or to pay the required franchise tax, the domestic limited liability company or the authority of a foreign limited liability company may be reinstated by filing a certificate of reinstatement, in the manner and form to be prescribed by the secretary of state and paying to the secretary of state all fees and taxes, including any penalties thereon, due to the state. The fee for filing a certificate of reinstatement shall be the same as that prescribed by K.S.A.

17-7506, and amendments thereto, for filing a certificate of extension, restoration, renewal or revival of a corporation's articles of incorporation.

(e) When reinstatement is effective, it relates back to and takes effect as of the effective date of the forfeiture and the company may resume its business as if the forfeiture had never occurred.

(f) No limited liability company shall be required to file its first annual report under this act, or pay any annual franchise tax required to accompany such report, unless such limited liability company has filed its articles of organization or application for authority at least six months prior to the last day of its tax period. If any limited liability company files with the secretary of state a notice of change in its tax period and the next annual report filed by such limited liability company subsequent to such notice is based on a tax period of less than 12 months, the annual tax liability shall be determined by multiplying the annual franchise tax liability for such year by a fraction, the numerator of which is the number of months or any portion thereof covered by the annual report and the denominator of which is 12, except that the tax shall not be less than \$40.

(g) *When any limited liability company that is required to file an annual report with the secretary of state applies for an extension of time for filing its annual income tax return with the internal revenue service, the time for filing the annual report with the secretary of state shall be extended, correspondingly, upon filing a copy of the application to income tax authorities with the secretary of state, prior to the due date of its annual report. All such copies of applications for extension of the time for filing income tax returns filed shall be maintained by the secretary of state in a confidential file and shall not be disclosed to any person except as authorized pursuant to the provisions of K.S.A. 79-3234 and amendments thereto, a proper judicial order, or subsection (h). All copies of such applications shall be preserved for one year and thereafter until the secretary of state orders that they be destroyed.*

(h) *A copy of such application shall be open to inspection by or disclosure to any person who was a member of such limited liability company during any part of the period covered by the extension.*

Sec. 97. K.S.A. 56-1a156 is hereby amended to read as follows: 56-1a156. (a) ~~The original signed copy, together with a duplicate copy which may be either a signed or conformed copy,~~ of the certificate of limited partnership, any certificates of amendment or cancellation and any judicial decree of amendment or cancellation shall be delivered to the secretary of state. A person who executes a certificate as an agent or fiduciary shall not be required to exhibit evidence of the person's authority as a prerequisite to filing. Unless the secretary of state finds that any certificate does not conform to law, upon receipt of all filing fees required by law, the secretary of state shall:

(1) Certify that the certificate of limited partnership, certificate of amendment, certificate of cancellation or judicial decree of amendment or cancellation has been filed in the secretary of state's office by endorsing upon the original certificate the word "Filed" and the date and hour of the filing; in the absence of actual fraud this endorsement is conclusive of the date and time of its filing;

(2) ~~file and index~~ record the endorsed certificate *in an electronic medium*; and

(3) return the ~~duplicate copy, similarly~~ *original document* certified as *a true copy of the recorded document*, to the person who filed it or that person's representative.

(b) The certificate of limited partnership shall be amended as provided in a certificate of amendment or decree of amendment upon the filing of the certificate of amendment or judicial decree of amendment in the office of the secretary of state or upon the future effective date specified in the certificate of amendment or judicial decree of amendment. The certificate of limited partnership is canceled upon the filing of a certificate of cancellation or a judicial decree of amendment in the office of the secretary of state, upon the future effective date specified in the certificate of cancellation or a judicial decree or as specified in this act.

(c) The fee required by K.S.A. 56-1a605, *and amendments thereto*, shall be paid at the time of the filing of a certificate of limited partnership, a certificate of amendment or a certificate of cancellation.

(d) The fee required by K.S.A. 56-1a605, *and amendments thereto*, shall be paid for a certified copy of any paper on file pursuant to this act, and the fee fixed pursuant to K.S.A. 56-1a605, *and amendments thereto*,

shall be paid for each page copied.

Sec. 98. K.S.A. 56-1a502 is hereby amended to read as follows: 56-1a502. Before doing business in the state of Kansas, a foreign limited partnership shall register with the secretary of state. In order to register, a foreign limited partnership shall submit to the secretary of state together with payment of the fee required by K.S.A. 56-1a605 and amendments thereto, an original copy executed by a general partner, together with a duplicate copy, of an application for registration as a foreign limited partnership, setting forth:

- (a) The name of the foreign limited partnership;
- (b) the state or other jurisdiction or country where organized, the date of its organization and a statement issued by an appropriate authority in that jurisdiction *or by a third-party agent authorized by the secretary of state* that the foreign limited partnership exists in good standing under the laws of the jurisdiction of its organization;
- (c) the nature of the business or purposes to be conducted or promoted in the state of Kansas;
- (d) the address of the registered office and the name and address of the resident agent for service of process required to be maintained by subsection (b) of K.S.A. 56-1a504 and amendments thereto;
- (e) an irrevocable written consent of the foreign limited partnership that actions may be commenced against it in the proper court of any county where there is proper venue by the service of process on the secretary of state as provided for in K.S.A. 60-304 and amendments thereto and stipulating and agreeing that such service shall be taken and held, in all courts, to be as valid and binding as if due service had been made upon the general partners of the foreign limited partnership;
- (f) the name and business, residence or mailing address of each of the general partners; and
- (g) the date on which the foreign limited partnership first did, or intends to do, business in the state of Kansas.

Sec. 99. K.S.A. 2003 Supp. 56-1a606 is hereby amended to read as follows: 56-1a606. (a) Every limited partnership organized under the laws of this state shall make an annual report in writing to the secretary of state, stating the prescribed information concerning the limited partnership at the close of business on the last day of its tax period next preceding the date of filing. If the limited partnership's tax period is other than the calendar year, it shall give notice of its different tax period to the secretary of state prior to December 31 of the year it commences the different tax period. The annual report shall be filed at the time prescribed by law for filing the limited partnership's annual Kansas income tax return. If the limited partnership applies for an extension of time for filing its annual income tax return under the internal revenue code or under K.S.A. 79-3221 and amendments thereto, the limited partnership shall also apply, not more than 90 days after the due date of its annual report, to the secretary of state for an extension of the time for filing its report and an extension shall be granted for a period of time corresponding to that granted under the internal revenue code or K.S.A. 79-3221 and amendments thereto. The application shall include a copy of the application to income tax authorities.

(b) The annual report shall be made on a form prescribed by the secretary of state. The report shall contain the following information:

- (1) The name of the limited partnership; and
- (2) a list of the partners owning at least 5% of the capital of the partnership, with the post office address of each.

(c) Every limited partnership subject to the provisions of this section which is a limited corporate partnership, as defined in K.S.A. 17-5903 and amendments thereto, and which holds agricultural land, as defined in K.S.A. 17-5903 and amendments thereto, within this state shall show the following additional information on the report:

- (1) The number of acres and location, listed by section, range, township and county of each lot, tract or parcel of agricultural land in this state owned or leased by the limited partnership; and
- (2) whether any of the agricultural land held and reported under subsection (c)(1) was acquired after July 1, 1981.

(d) The annual report shall be signed by the general partner or partners of the limited partnership, sworn to before an officer duly authorized to administer oaths and forwarded to the secretary of state. At the time of filing the report, the limited partnership shall pay to the secretary of

state an annual franchise tax in an amount equal to \$2 for each \$1,000 of the partners' net capital accounts located in or used in this state at the end of the preceding taxable year as required to be reported on the federal partnership return of income, except that no annual tax shall be less than \$40 or more than \$5,000. The amount of any such franchise tax paid by the limited partnership to the secretary as provided by this subsection shall not be disclosed by the secretary.

(e) The provisions of K.S.A. 17-7509 and amendments thereto, relating to penalties for failure of a corporation to file an annual report or pay the required franchise tax, and the provisions of subsection (a) of K.S.A. 17-7510 and amendments thereto, relating to forfeiture of a domestic corporation's articles of incorporation for failure to file an annual report or pay the required franchise tax, shall be applicable to the certificate of partnership of any limited partnership which fails to file its annual report or pay the franchise tax within 90 days of the time prescribed in this section for filing and paying the same. Whenever the certificate of partnership of a limited partnership is forfeited for failure to file an annual report or to pay the required franchise tax, the limited partnership may be reinstated by filing a certificate of reinstatement, in the manner and form to be prescribed by the secretary of state and paying to the secretary of state all fees and taxes, including any penalties thereon, due to the state. The fee for filing a certificate of reinstatement shall be the same as that prescribed by K.S.A. 17-7506 and amendments thereto for filing a certificate of extension, restoration, renewal or revival of a corporation's articles of incorporation.

Sec. 100. K.S.A. 2003 Supp. 56-1a607 is hereby amended to read as follows: 56-1a607. (a) Every foreign limited partnership shall make an annual report in writing to the secretary of state, stating the prescribed information concerning the limited partnership at the close of business on the last day of its tax period next preceding the date of filing. If the limited partnership's tax period is other than the calendar year, it shall give notice of its different tax period to the secretary of state prior to December 31 of the year it commences the different tax period. The annual report shall be filed at the time prescribed by law for filing the limited partnership's annual Kansas income tax return. If the limited partnership applies for an extension of time for filing its annual income tax return under the internal revenue code or under K.S.A. 79-3221 and amendments thereto, the limited partnership shall also apply, not more than 90 days after the due date of its annual report, to the secretary of state for an extension of the time for filing its report and an extension shall be granted for a period of time corresponding to that granted under the internal revenue code or K.S.A. 79-3221 and amendments thereto. The application shall include a copy of the application to income tax authorities.

(b) The annual report shall be made on a form prescribed by the secretary of state. The report shall contain the name of the limited partnership.

(c) Every foreign limited partnership subject to the provisions of this section which is a limited corporate partnership, as defined in K.S.A. 17-5903 and amendments thereto, and which holds agricultural land, as defined in K.S.A. 17-5903 and amendments thereto, within this state shall show the following additional information on the report:

(1) The number of acres and location, listed by section, range, township and county of agricultural land in this state owned or leased by the limited partnership; and

(2) whether any of the agricultural land held and reported under subsection (c)(1) was acquired after July 1, 1981.

(d) The annual report shall be signed by the general partner or partners of the limited partnership, sworn to before an officer duly authorized to administer oaths and forwarded to the secretary of state. At the time of filing the report, the foreign limited partnership shall pay to the secretary of state an annual franchise tax in an amount equal to \$2 for each \$1,000 of the partners' net capital accounts located in or used in this state at the end of the preceding taxable year as required to be reported on the federal partnership return of income, except that no annual tax shall be less than \$40 or more than \$5,000. The amount of any such franchise tax paid by the limited partnership to the secretary as provided by this subsection shall not be disclosed by the secretary.

(e) The provisions of K.S.A. 17-7509 and amendments thereto, re-



lating to penalties for failure of a corporation to file an annual report or pay the required franchise tax, and the provisions of subsection (b) of K.S.A. 17-7510 and amendments thereto, relating to forfeiture of a foreign corporation's authority to do business in this state for failure to file an annual report or pay the required franchise tax, shall be applicable to the authority of any foreign limited partnership which fails to file its annual report or pay the franchise tax within 90 days of the time prescribed in this section for filing and paying the same. Whenever the authority of a foreign limited partnership to do business in this state is forfeited for failure to file an annual report or to pay the required franchise tax, the foreign limited partnership's authority to do business in this state may be reinstated by filing a certificate of reinstatement, in the manner and form to be prescribed by the secretary of state and paying to the secretary of state all fees and taxes, including any penalties thereon, due to the state. The fee for filing a certificate of reinstatement shall be the same as that prescribed by K.S.A. 17-7506 and amendments thereto for filing a certificate of extension, restoration, renewal or revival of a corporation's articles of incorporation.

New Sec. 101. (a) Activities of a foreign limited liability company which do not constitute doing business within the meaning of K.S.A. 2003 Supp. 17-76,121, and amendments thereto, include:

- (1) Maintaining, defending or settling an action or proceeding;
  - (2) holding meetings or carrying on any other activity concerning its internal affairs;
  - (3) maintaining bank accounts;
  - (4) maintaining offices or agencies for the transfer, exchange and registration of the company's own securities or maintaining trustees or depositories with respect to those securities;
  - (5) selling through independent contractors;
  - (6) soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts;
  - (7) creating or acquiring indebtedness, mortgages or security interests in real or personal property;
  - (8) securing or collecting debts or foreclosing mortgages or other security interests in property securing the debts, and holding, protecting and maintaining property so acquired;
  - (9) conducting an isolated transaction that is completed within 30 days and is not one in the course of similar transactions of like nature; and
  - (10) transacting business in interstate commerce.
- (b) The ownership in this state of income producing real property or tangible personal property, other than property excluded under subsection (a), constitutes doing business in this state.

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

(d) The provisions of this section shall be part of and supplemental to the Kansas revised limited liability company act.

New Sec. 102. (a) When any limited partnership that is required to file an annual report with the secretary of state, shall apply for an extension of time for filing its annual income tax return with the internal revenue service, the time for filing the annual report with the secretary of state shall be extended, correspondingly, upon filing a copy of the application to income tax authorities with the secretary of state, prior to the due date of its annual report. All such copies of applications for extension of the time for filing income tax returns shall be maintained by the secretary of state in a confidential file and shall not be disclosed to any person except as authorized pursuant to the provisions of K.S.A. 79-3234 and amendments thereto, a proper judicial order, and subsection (b). All copies of such applications shall be preserved for one year and thereafter until the secretary of state orders that they be destroyed. Nothing in this section shall be deemed to prohibit the secretary of state from issuing any document described in K.S.A. 56-1a605, and amendments thereto, concerning a limited partnership.

(b) A copy of such application shall be open to inspection by or disclosure to any person who was a partner of the limited partnership during any part of the period covered by the extension.

(c) The provisions of this section shall be part of and supplemental

to the revised uniform limited partnership act.

New Sec. 103. (a) Activities of a foreign limited partnership which do not constitute doing business within the meaning of K.S.A. 56-1a502, and amendments thereto, include:

- (1) Maintaining, defending or settling an action or proceeding;
- (2) holding meetings or carrying on any other activity concerning its internal affairs;
- (3) maintaining bank accounts;
- (4) maintaining offices or agencies for the transfer, exchange and registration of the limited partnership's own securities or maintaining trustees or depositories with respect to those securities;
- (5) selling through independent contractors;
- (6) soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts;
- (7) creating or acquiring indebtedness, mortgages or security interests in real or personal property;
- (8) securing or collecting debts or foreclosing mortgages or other security interests in property securing the debts, and holding, protecting and maintaining property so acquired;
- (9) conducting an isolated transaction that is completed within 30 days and is not one in the course of similar transactions of like nature; and
- (10) transacting business in interstate commerce.

(b) The ownership in this state of income producing real property or tangible personal property, other than property excluded under subsection (a), constitutes doing business in this state.

(c) This section does not apply in determining the contacts or activities that may subject a foreign limited partnership to service of process, taxation or regulation under any other law of this state.

(d) The provisions of this section shall be part of and supplemental to the revised uniform limited partnership act.

New Sec. 104. (a) When any limited liability partnership that is required to file an annual report with the secretary of state, shall apply for an extension of time for filing its annual income tax return from the internal revenue service, the time for filing the annual report with the secretary of state shall be extended, correspondingly, upon filing a copy of the application to income tax authorities with the secretary of state, prior to the due date of its annual report. All such copies of applications for extension of the time for filing income tax returns shall be maintained by the secretary of state in a confidential file and shall not be disclosed to any person except as authorized pursuant to the provisions of K.S.A. 79-3234 and amendments thereto, a proper judicial order, and subsection (b). All copies of such applications shall be preserved for one year and thereafter until the secretary of state orders that they be destroyed.

(b) A copy of such application shall be open to inspection by or disclosure to any person who was a partner of the limited liability partnership during any part of the period covered by the extension.

(c) The provisions of this section shall be part of and supplemental to the revised uniform partnership act.

New Sec. 105. (a) The state board of healing arts shall adopt rules and regulations to limit the percentage of ownership when a licensed physician assistant forms a professional corporation pursuant to K.S.A. 17-2706 *et seq.*, and amendments thereto, in combination with other professional services.

(b) This section shall be part of and supplemental to the physician assistant licensure act.

New Sec. 106. (a) The state board of healing arts shall adopt rules and regulations to limit the percentage of ownership when a licensed occupational therapist forms a professional corporation pursuant to K.S.A. 17-2706 *et seq.*, and amendments thereto, in combination with other professional services.

(b) This section shall be part of and supplemental to the occupational therapy practice act.

Sec. 107. K.S.A. 2003 Supp. 17-2707 is hereby amended to read as follows: 17-2707. As used in this act, unless the context clearly indicates that a different meaning is intended:

- (a) "Professional corporation" means a corporation organized under

this act.

(b) “Professional service” means the type of personal service rendered by a person duly licensed, *registered or certified* by this state as a member of any of the following professions, each paragraph constituting one type:

- (1) A certified public accountant;
- (2) an architect;
- (3) an attorney-at-law;
- (4) a chiropractor;
- (5) a dentist;
- (6) an engineer;
- (7) an optometrist;
- (8) an osteopathic physician or surgeon;
- (9) a physician, surgeon or doctor of medicine;
- (10) a veterinarian;
- (11) a podiatrist;
- (12) a pharmacist;
- (13) a land surveyor;
- (14) a licensed psychologist;
- (15) a specialist in clinical social work;
- (16) a licensed physical therapist;
- (17) a landscape architect;
- (18) a registered professional nurse;
- (19) a real estate broker or salesperson;
- (20) a clinical professional counselor;
- (21) a geologist;
- (22) a clinical psychotherapist; ~~and~~
- (23) a clinical marriage and family therapist;
- (24) *a licensed physician assistant; and*
- (25) *a licensed occupational therapist.*

(c) “Regulating board” means the court, board or state agency which is charged with the licensing, *registering or certifying* and regulation of the practice of the profession which the professional corporation is organized to render.

(d) “Qualified person” means:

(1) Any natural person licensed, *registered or certified* to practice the same type of profession which any professional corporation is authorized to practice;

(2) the trustee of a trust which is a qualified trust under subsection (a) of section 401 of the federal internal revenue code, as in effect on January 1, ~~2001~~ 2004, or of a contribution plan which is a qualified employee stock ownership plan under subsection (a) of section 409A of the federal internal revenue code, as in effect on January 1, ~~2001~~ 2004; or

(3) the trustee of a revocable living trust established by a natural person who is licensed, *registered or certified* to practice the type of profession which any professional corporation is authorized to practice, if the terms of such trust provide that such natural person is the principal beneficiary and sole trustee of such trust and such trust does not continue to hold title to professional corporation stock following such natural person’s death for more than a reasonable period of time necessary to dispose of such stock.

Sec. 108. K.S.A. 2003 Supp. 17-2710 is hereby amended to read as follows: 17-2710. A professional corporation may be organized only for the purpose of rendering one type of professional service and service ancillary thereto and shall not engage in any other business, except that a single professional corporation may be organized to and render professional services under any two or more of the types set forth in items (2), (6), (13) and (17) ~~of subsection (b) of K.S.A. 17-2707, and amendments thereto;~~ under any two or more of the types set forth in items (4), (5), (7), (8), (9), (11), (12), (14), (15), (16) or (18) of subsection (b) of K.S.A. 17-2707, ~~and amendments thereto;~~ or under any two or more of the types set forth in items (8), (9), (18), (24) and (25) of subsection (b) of K.S.A. 17-2707, ~~and amendments thereto,~~ but shall be deemed to have the following purposes, whether or not authorized by its article of incorporation:

(a) To purchase, receive, lease, or otherwise acquire, own, hold, improve, use and otherwise deal in and with, real or personal property, or any interest therein, wherever situated;

(b) to purchase, receive, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge, or otherwise dispose of, and oth-

erwise use and deal in and with, shares of other interests in, or obligations of, other domestic or foreign corporations, associations, partnerships or individuals, insurance or annuities in any form, or direct or indirect obligations of the United States or of any other government, state, territory, governmental district or municipality or of any instrumentality thereof;

(c) to pay pensions and establish pension plans, profit-sharing plans, stock bonus plans, stock option plans and other incentive plans for any or all of its directors, officers and employees;

(d) to do all things necessary or incidental to the practice of the profession which the professional corporation is authorized to practice.

Sec. 109. K.S.A. 17-6102, 17-6201, 17-6202, 17-6301, 17-6302, 17-6305, 17-6402, 17-6407, 17-6408, 17-6410, 17-6412, 17-6417, 17-6418, 17-6420, 17-6422, 17-6423, 17-6424, 17-6425, 17-6426, 17-6501, 17-6503, 17-6504, 17-6505, 17-6506, 17-6507, 17-6508, 17-6509, 17-6510, 17-6511, 17-6512, 17-6513, 17-6514, 17-6515, 17-6517, 17-6518, 17-6519, 17-6520, 17-6604, 17-6801, 17-6805a, 17-6808, 17-6810, 17-6811, 17-6902, 17-6903, 17-6904, 17-6905, 17-6906, 17-6907, 17-6908, 17-6909, 17-6910, 17-6911, 17-7003, 17-7103, 17-7104, 17-7202, 17-7303, 17-7304, 17-7510, 17-7512, 17-7513, 17-7514, 56-1a156 and 56-1a502 and K.S.A. 2003 Supp. 17-2036, 17-2707, 17-2710, 17-6002, 17-6003, 17-6205, 17-6206, 17-6401, 17-6502, 17-6605, 17-6701, 17-6702, 17-6703, 17-6704, 17-6705, 17-6706, 17-6707, 17-6712, 17-6804, 17-7001, 17-7301, 17-7302, 17-7306, 17-7502, 17-7503, 17-7504, 17-7505, 17-7506, 17-7507, 17-7508, 17-7678, 17-76,121, 17-76,139, 56-1a606 and 56-1a607 are hereby repealed.

Sec. 110. This act shall take effect and be in force from and after January 1, 2005, and its publication in the statute book.

Approved May 17, 2004.

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