

HOUSE BILL No. 2401

By Committee on Federal and State Affairs

3-19

1 AN ACT concerning the Kansas general corporation code; relating to
2 quorum for the transaction of business; amendment to articles of
3 incorporation; amending K.S.A. 2018 Supp. 17-6506 and 17-6602 and
4 repealing the existing sections.

5
6 *Be it enacted by the Legislature of the State of Kansas:*

7 Section 1. K.S.A. 2018 Supp. 17-6506 is hereby amended to read as
8 follows: 17-6506. (a) Subject to the provisions of this code with respect to
9 the vote that shall be required for a specified action, the articles of
10 incorporation or bylaws of any corporation authorized to issue stock may
11 specify the number of shares or the amount of other securities, or both,
12 having voting power, the holders of which shall be present or represented
13 by proxy at any meeting in order to constitute a quorum for, and the votes
14 that shall be necessary for, the transaction of any business, but in no event
15 shall a quorum consist of holders of less than $\frac{1}{3}$ of the shares entitled to
16 vote at the meeting, except that, where a separate vote by the holders of
17 one or more than one class or series is required, a quorum shall consist of
18 no less than $\frac{1}{3}$ of the holders of the shares of such class or series. In the
19 absence of such specification in the articles of incorporation or bylaws of
20 the corporation:

21 ~~(a)~~(1) The holders of a majority of the shares entitled to vote, present
22 in person or represented by proxy, shall constitute a quorum at a meeting
23 of stockholders;

24 ~~(b)~~(2) in all matters other than the election of directors, the
25 affirmative vote of the holders of a majority of shares who are present in
26 person or represented by proxy at the meeting and entitled to vote on the
27 subject matter shall be the act of the stockholders;

28 ~~(c)~~(3) directors shall be elected by a plurality of the votes of the
29 shares present in person or represented by proxy at the meeting and
30 entitled to vote on the election of directors; and

31 ~~(d)~~(4) where a separate vote by one or more than one class or series is
32 required, the holders of a majority of the outstanding shares of such class
33 or series, present in person or represented by proxy, shall constitute a
34 quorum entitled to take action with respect to that vote on that matter and,
35 in all matters other than the election of directors, the affirmative vote of
36 the holders of a majority of shares of such class or series who are present

1 in person or represented by proxy at the meeting shall be the act of such
2 class or series. A bylaw amendment adopted by the stockholders which
3 specifies the votes that shall be necessary for the election of directors shall
4 not be further amended or repealed by the board of directors.

5 *(b) Notwithstanding the provisions of subsection (a), a quorum shall*
6 *consist of holders of no less than 10% of the shares entitled to vote at the*
7 *meeting, if the corporation has over 500 stockholders, and the*
8 *corporation's articles of incorporation or bylaws provide that no*
9 *stockholder may vote more than one share.*

10 Sec. 2. K.S.A. 2018 Supp. 17-6602 is hereby amended to read as
11 follows: 17-6602. (a) After a corporation has received payment for any of
12 its capital stock, or after a nonstock corporation has members, it may
13 amend its articles of incorporation, from time to time, in any and as many
14 respects as may be desired, so long as its articles of incorporation, as
15 amended, would contain only such provisions as it would be lawful and
16 proper to insert in an original articles of incorporation filed at the time of
17 the filing of the amendment. If a change in stock or the rights of
18 stockholders, or an exchange, reclassification, subdivision, combination or
19 cancellation of stock or rights of stockholders is to be made, the
20 amendment to the articles of incorporation shall contain such provisions as
21 may be necessary to effect such change, exchange, reclassification,
22 subdivision, combination or cancellation. In particular, and without
23 limitation upon such general power of amendment, a corporation may
24 amend its articles of incorporation, from time to time, so as:

25 (1) To change its corporate name;

26 (2) to change, substitute, enlarge or diminish the nature of its business
27 or its corporate powers and purposes;

28 (3) to increase or decrease its authorized capital stock or to reclassify
29 the same, by changing the number, par value, designations, preferences, or
30 relative, participating, optional or other special rights of the shares, or the
31 qualifications, limitations or restrictions of such rights, or by changing
32 shares with par value into shares without par value, or shares without par
33 value into shares with par value either with or without increasing or
34 decreasing the number of shares, or by subdividing or combining the
35 outstanding shares of any class or series into a greater or lesser number of
36 outstanding shares;

37 (4) to cancel or otherwise affect the right of the holders of the shares
38 of any class to receive dividends which have accrued but have not been
39 declared;

40 (5) to create new classes of stock having rights and preferences either
41 prior and superior or subordinate and inferior to the stock of any class then
42 authorized, whether issued or unissued;

43 (6) to change the period of its duration. Any or all such changes or

1 alterations may be effected by one certificate of amendment; or

2 (7) to delete: (A) Such provisions of the original articles of
3 incorporation which named the incorporator or incorporators, the initial
4 board of directors and the original subscribers for shares; and (B) such
5 provisions contained in any amendment to the articles of incorporation as
6 were necessary to effect a change, exchange, reclassification, subdivision,
7 combination or cancellation of stock, if such change, exchange,
8 reclassification, subdivision, combination or cancellation has become
9 effective.

10 (b) Every amendment authorized by subsection (a) shall be made and
11 effected in the following manner:

12 (1) (A) If the corporation has capital stock, its board of directors shall
13 adopt a resolution setting forth the amendment proposed, declaring its
14 advisability, and either calling a special meeting of the stockholders
15 entitled to vote for the consideration of such amendment or directing that
16 the amendment proposed be considered at the next annual meeting of the
17 stockholders, except that unless otherwise expressly required by the
18 articles of incorporation, no meeting or vote of stockholders shall be
19 required to adopt an amendment that effects only changes described in
20 subsection (a)(1) or (a)(7). Such special or annual meeting shall be called
21 and held upon notice in accordance with K.S.A. 17-6512, and amendments
22 thereto. The notice shall set forth such amendment in full or a brief
23 summary of the changes to be effected thereby unless such notice
24 constitutes a notice of internet availability of proxy materials under the
25 rules promulgated under the securities exchange act of 1934. At the
26 meeting a vote of the stockholders entitled to vote thereon shall be taken
27 for and against any proposed amendment that requires adoption by
28 stockholders. If no vote of stockholders is required to effect such
29 amendment, or if a majority of the outstanding stock entitled to vote
30 thereon and a majority of the outstanding stock of each class entitled to
31 vote thereon as a class have been voted in favor of the amendment, a
32 certificate setting forth the amendment and certifying that such amendment
33 has been duly adopted in accordance with the provisions of this section
34 shall be executed and filed, and shall become effective, in accordance with
35 K.S.A. 2018 Supp. 17-7908 through 17-7911, and amendments thereto.

36 (B) *Notwithstanding the provisions of subparagraph (A), a*
37 *corporation may amend its articles of incorporation by a majority of a*
38 *quorum voting at a special or annual meeting, if the corporation has over*
39 *500 stockholders, and the corporation's articles of incorporation or*
40 *bylaws provide that no stockholder may vote more than one share.*

41 (2) The holders of the outstanding shares of a class shall be entitled to
42 vote as a class upon a proposed amendment, whether or not entitled to vote
43 thereon by the provisions of the articles of incorporation, if the amendment

1 would increase or decrease the aggregate number of authorized shares of
2 such class, increase or decrease the par value of the shares of such class, or
3 alter or change the powers, preferences or special rights of the shares of
4 such class so as to affect them adversely. If any proposed amendment
5 would alter or change the powers, preferences or special rights of one or
6 more series of any class so as to affect them adversely, but does not affect
7 the entire class, then only the shares of the series affected by the
8 amendment shall be considered a separate class for the purposes of this
9 subsection. The number of authorized shares of any such class or classes
10 of stock may be increased or decreased, but not below the number of
11 shares thereof then outstanding, by the affirmative vote of the holders of a
12 majority of the stock of the corporation entitled to vote irrespective of this
13 paragraph, if so provided in the original articles of incorporation, in any
14 amendment thereto which created such class or classes of stock or which
15 was adopted prior to the issuance of any shares of such class or classes of
16 stock or in any amendment thereto which was authorized by a resolution
17 or resolutions adopted by the affirmative vote of the holders of a majority
18 of such class or classes of stock.

19 (3) If the corporation is a nonstock corporation, then the governing
20 body of the corporation shall adopt a resolution setting forth the
21 amendment proposed and declaring its advisability. If a majority of all the
22 members of the governing body shall vote in favor of such amendment, a
23 certificate thereof shall be executed and filed, and shall become effective,
24 in accordance with K.S.A. 2018 Supp. 17-7908 through 17-7911, and
25 amendments thereto. The articles of incorporation of any nonstock
26 corporation may contain a provision requiring any amendment thereto to
27 be approved by a specified number or percentage of the members or of any
28 specified class of members of such corporation in which event such
29 proposed amendment shall be submitted to the members or to any
30 specified class of members of such corporation in the same manner, so far
31 as applicable, as is provided in this section for an amendment to the
32 articles of incorporation of a stock corporation. In the event of the
33 adoption of such amendment, a certificate evidencing such amendment
34 shall be executed and filed and shall become effective in accordance with
35 K.S.A. 2018 Supp. 17-7908 through 17-7911, and amendments thereto.

36 (4) Whenever the articles of incorporation shall require for action by
37 the board of directors of a corporation other than a nonstock corporation or
38 by the governing body of a nonstock corporation, by the holders of any
39 class or series of shares or by the members, or by the holders of any other
40 securities having voting power the vote of a greater number or proportion
41 than is required by any section of this code, the provision of the articles of
42 incorporation requiring such greater vote shall not be altered, amended or
43 repealed except by such greater vote.

1 (c) The resolution authorizing a proposed amendment to the articles
2 of incorporation may provide that at any time prior to the effectiveness of
3 the filing of the amendment with the secretary of state, notwithstanding
4 authorization of the proposed amendment by the stockholders of the
5 corporation or by the members of a nonstock corporation, the board of
6 directors or governing body may abandon such proposed amendment
7 without further action by the stockholders or members.

8 Sec. 3. K.S.A. 2018 Supp. 17-6506 and 17-6602 are hereby repealed.

9 Sec. 4. This act shall take effect and be in force from and after its
10 publication in the statute book.