

HOUSE BILL No. 2451

By Committee on Judiciary

2-11

9 AN ACT concerning business entities; amending K.S.A. 2004 Supp. 17-
10 2030, 17-4634, 17-4677, 17-6003, 17-6301, 17-6401, 17-6501, 17-6518,
11 17-6701, 17-6705, 17-7693, 17-76,105 and 17-76,106 and repealing the
12 existing sections.
13

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

15 Section 1. K.S.A. 2004 Supp. 17-2030 is hereby amended to read as
16 follows: 17-2030. Any business trust, whether domestic or foreign, desir-
17 ing to transact business in this state shall file in the office of the secretary
18 of state, on such forms, if any, as the secretary of the state may prescribe:

19 (a) An executed copy of the trust instrument by which the trust was
20 created and of all amendments thereto or a true and correct copy thereof
21 certified to be such by a trustee thereof under penalty of perjury or by a
22 public official of another state, territory, or country in whose office an
23 executed copy thereof is on file;

24 (b) a verified list of the names and addresses of its trustees; ~~and~~

25 ~~(c) a balance sheet, certified by the trustee as of a date no earlier~~
26 ~~than 60 days prior to such date of filing, fairly and truly reflecting its~~
27 ~~assets and liabilities and specifically setting out its corpus, except that in~~
28 ~~the case of a foreign business trust such balance sheet shall fairly and~~
29 ~~truly reflect an allocation of its money and other assets as between those~~
30 ~~located, used, or to be used in this state and those located, used, or to be~~
31 ~~used elsewhere;~~

32 ~~—(d) the location of its registered office in this state and the name of~~
33 ~~its resident agent in charge of such registered office; and~~

34 ~~(e) (d) a foreign business trust shall file its irrevocable consent to~~
35 ~~service of process, accompanied by a duly certified copy of an order or~~
36 ~~resolution of the trustees of any foreign business trust authorizing the~~
37 ~~execution and filing of such irrevocable consent, conforming in substance~~
38 ~~to the consent required of foreign corporations in K.S.A. 17-7301 and~~
39 ~~amendments thereto.~~

40 Sec. 2. K.S.A. 2004 Supp. 17-4634 is hereby amended to read as
41 follows: 17-4634. (a) Every corporation organized under the electric co-
42 operative act of this state shall make an annual report in writing to the
43 secretary of state, showing the financial condition of the corporation at

1 the close of business on the last day of its tax period next preceding the
2 date of filing, but if any such corporation's tax period is other than the
3 calendar year, it shall give notice thereof to the secretary of state prior to
4 December 31 of the year it commences such tax period. The report shall
5 be filed on or before the fifteenth day of the fourth month following the
6 close of the tax year of the electric cooperative. An extension for filing
7 the annual report may be granted upon the filing of a written application
8 with the secretary of state prior to the due date of the report, except that
9 no such extension may be granted for a period of more than 90 days. The
10 report shall be made on a form provided by the secretary of state, con-
11 taining the following information:

- 12 (1) The name of the corporation;
- 13 (2) the location of the principal office;
- 14 (3) the ~~name~~ *names and addresses* of the president, secretary and
15 treasurer *or equivalents of such officers*, and the ~~names~~ *members of the*
16 *board of directors with the residence address of each;*
- 17 (4) the number of memberships issued; *and*
- 18 (5) ~~a balance sheet showing the financial condition of the corporation~~
19 ~~at the close of business on the last day of its tax period next preceding~~
20 ~~the date of filing, and~~
- 21 ~~(6) the change or changes, if any, in the particulars made since the~~
22 ~~last annual report.~~

23 (b) Such reports shall be signed by ~~the president, vice president or~~
24 ~~secretary of the corporation, sworn to before an officer duly authorized~~
25 ~~to administer oaths~~ *an authorized officer under penalty of perjury* and
26 forwarded to the secretary of state. At the time of filing such annual
27 report, each such corporation shall pay an annual franchise fee in an
28 amount equal to \$40.

29 Sec. 3. K.S.A. 2004 Supp. 17-4677 is hereby amended to read as
30 follows: 17-4677. (a) Every cooperative organized under the renewable
31 energy electric generation cooperative act shall make an annual report in
32 writing to the secretary of state, showing the financial condition of the
33 cooperative at the close of business on the last day of its tax period next
34 preceding the date of filing, but if any such cooperative's tax period is
35 other than the calendar year, it shall give notice thereof to the secretary
36 of state prior to December 31 of the year it commences such tax period.
37 The report shall be filed on or before the 15th day of the fourth month
38 following the close of the tax year of the electric cooperative. An extension
39 for filing the annual report may be granted upon the filing of a written
40 application with the secretary of state prior to the due date of the report,
41 except that no such extension may be granted for a period of more than
42 90 days. The report shall be made on a form provided by the secretary
43 of state, containing the following information:

- 1 (1) The name of the cooperative;
- 2 (2) the location of the principal office of the cooperative;
- 3 (3) the names and addresses of the president, secretary, treasurer *or*
- 4 *equivalent of such officers*, and *the members of the board of directors* of
- 5 the cooperative;
- 6 (4) the number of members of the cooperative; *and*
- 7 (5) ~~a balance sheet showing the financial condition of the cooperative~~
- 8 ~~at the close of business on the last day of its tax period next preceding~~
- 9 ~~the date of filing; and~~
- 10 ~~(6) the change or changes, if any, in the particulars made since the~~
- 11 last annual report.
- 12 (b) The annual report shall be signed by ~~the president, vice president~~
- 13 ~~or secretary of the cooperative, sworn to before an officer duly authorized~~
- 14 ~~to administer oaths, an authorized officer under penalty of perjury~~ and
- 15 forwarded to the secretary of state. At the time of filing such annual
- 16 report, the cooperative shall pay an annual franchise fee in an amount
- 17 equal to \$40.
- 18 Sec. 4. K.S.A. 2004 Supp. 17-6003 is hereby amended to read as
- 19 follows: 17-6003. (a) When any provision of this act requires any instru-
- 20 ment to be filed with the secretary of state or in accordance with this
- 21 section, such instrument shall be executed as follows:
- 22 (1) The articles of incorporation shall be signed by the incorporator
- 23 or incorporators, and any other instrument to be filed before the election
- 24 of the initial board of directors, if the initial directors were not named in
- 25 the articles of incorporation, shall be signed by the incorporator or in-
- 26 corporators. If any incorporator is not available by reason of death, in-
- 27 capacity, refusal or neglect to act, then the instrument may be signed by
- 28 any person for whom or on whose behalf such incorporator was acting as
- 29 employee or agent. The instrument shall state that the incorporator is not
- 30 available and the reason therefor; that such incorporator was acting as
- 31 employee or agent for or on behalf of such person; and that such person's
- 32 signature is authorized.
- 33 (2) All other instruments shall be signed: (i) By any authorized officer
- 34 of the corporation; (ii) if it appears from the instrument that there are no
- 35 such officers, by a majority of the directors or by such directors as may
- 36 be designated by the board; (iii) if it appears from the instrument that
- 37 there are no such officers or directors, by the holders of record, or such
- 38 of them as may be designated by the holders of record, of a majority of
- 39 all outstanding shares of stock; or (iv) by the holders of record of all
- 40 outstanding shares of stock.
- 41 (b) The execution of any document required to be filed with the
- 42 secretary of state pursuant to chapter 17 of the Kansas Statutes Annotated
- 43 shall constitute an oath or affirmation, under the penalties of perjury, that

1 the facts stated in the document are true.

2 (c) When any provision of this act requires any instrument to be filed
3 with the secretary of state or in accordance with this section, such re-
4 quirement means that:

5 (1) The original signed instrument shall be delivered to the office of
6 the secretary of state. Any signature on documents authorized to be filed
7 with the secretary of state under the provisions of this act may be a fac-
8 simile, a conformed signature or an electronically transmitted signature;

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

12 (3) upon delivery of the instrument, and upon tender of the required
13 taxes and fees, the secretary of state shall certify that the instrument has
14 been filed in the office of secretary of state by endorsing upon the original
15 signed instrument the word "Filed" and the date and hour of its filing.
16 This endorsement is the "filing date" of the instrument and is conclusive
17 of the date and time of its filing in the absence of actual fraud. The
18 secretary of state shall thereupon record the endorsed instrument in an
19 electronic medium; and

20 (4) the secretary of state shall return the original instrument as a
21 certified copy of the original recorded instrument, except this provision
22 shall not apply to annual reports.

23 (d) Any instrument filed in accordance with subsection (c) shall be
24 effective upon its filing date. Except where it has been determined oth-
25 erwise by a court of competent jurisdiction, any instrument filed in ac-
26 cordance with subsections (c)(1) through (c)(4) prior to July 1, 1998, shall
27 be deemed to be effective on the date it was so filed, unless a different
28 effective date was specified for the instrument in accordance with this
29 subsection, and the recording of such instrument with a register of deeds
30 shall not be required in order for the instrument to take effect. Any
31 instrument may provide that it is not to become effective until a specified
32 date subsequent to its filing date, but such date shall not be later than 90
33 days after its filing date. If any instrument filed in accordance with sub-
34 section (c) provides for a future effective date and the transaction is ter-
35 minated or its terms are amended to change the future effective date
36 prior to the future effective date, the instrument shall be terminated or
37 amended by the filing, prior to the future effective date, of a certificate
38 of termination or a certificate of amendment of the original instrument,
39 executed and filed in accordance with this section. The certificate shall
40 identify the instrument which has been terminated or amended, and shall
41 state that the instrument has been terminated or the manner in which it
42 has been amended.

43 (e) If another section of this act or any other law of this state specif-

1 ically prescribes a manner of executing or filing a specified instrument or
2 a time when such instrument shall become effective, which differs from
3 the corresponding provisions of this section, then the provisions of such
4 other section shall govern.

5 (f) When any instrument authorized to be filed with the secretary of
6 state under any provision of this act has been so filed and is an inaccurate
7 record of the corporate action therein referred to, or was defectively or
8 erroneously executed, such instrument may be corrected by filing with
9 the secretary of state a certificate of correction of such instrument which
10 shall be executed and filed in accordance with this section. The certificate
11 of correction shall specify the inaccuracy or defect to be corrected and
12 shall set forth the portion of the instrument in corrected form. In lieu of
13 filing a certificate of correction, the instrument may be corrected by filing
14 with the secretary of state a corrected instrument which shall be executed
15 and filed in accordance with this section. The corrected instrument shall
16 be specifically designated as such in its heading, shall specify the inac-
17 curacy or defect to be corrected, and shall set forth the entire instrument
18 in corrected form. An instrument corrected in accordance with this sec-
19 tion shall be effective as of the date the original instrument was filed,
20 except as to those persons who are substantially and adversely affected
21 by the correction and as to those persons, the corrected instrument shall
22 be effective from the filing date.

23 (g) When any corporation conveys any lands or interests therein by
24 deed or other appropriate instrument of conveyance, such deed or in-
25 strument shall be executed on behalf of the corporation by ~~any authorized~~
26 ~~officer~~ *the president or vice-president* of the corporation. Such deed or
27 instrument, when acknowledged by such officer to be the act of the cor-
28 poration, or proved in the same manner provided for other conveyances
29 of lands, may be recorded in the same manner and with the same effect
30 as other deeds. Corporations likewise shall have power to convey by an
31 agent or attorney so authorized under power of attorney or other instru-
32 ment containing a power to convey real estate or any interest therein,
33 which power of attorney shall be executed by the corporation in the same
34 manner as herein provided for the execution of deeds or other instru-
35 ments of conveyance.

36 (h) If any instrument authorized to be filed with the secretary of state
37 is filed and is inaccurately, defectively or erroneously executed or oth-
38 erwise defective in any respect, the secretary of state shall not be liable
39 to any person for the preclearance for filing, the acceptance for filing or
40 the filing and indexing such instrument.

41 Sec. 5. K.S.A. 2004 Supp. 17-6301 is hereby amended to read as
42 follows: 17-6301. (a) The business and affairs of every corporation shall
43 be managed by or under the direction of a board of directors, except as

1 may be otherwise provided in this act or in the articles of incorporation.
2 If any such provision is made in the articles of incorporation, the powers
3 and duties conferred or imposed upon the board of directors by this act
4 shall be exercised or performed to such extent and by such person or
5 persons as shall be provided in the articles of incorporation.

6 (b) The board of directors of a corporation shall consist of one or
7 more members, each of whom shall be a natural person. The number of
8 directors shall be fixed by, or in the manner provided in, the bylaws,
9 unless the articles of incorporation establish the number of directors, in
10 which case a change in the number of directors shall be made only by
11 amendment of the articles. Directors need not be stockholders unless so
12 required by the articles of incorporation or the bylaws. The articles of
13 incorporation or bylaws may prescribe other qualifications for directors.
14 Each director shall hold office until a successor is elected and qualified
15 or until such director's earlier resignation or removal. Any director may
16 resign at any time upon notice given in writing or by electronic transmis-
17 sion to the corporation. A majority of the total number of directors shall
18 constitute a quorum for the transaction of business unless the articles of
19 incorporation or the bylaws require a greater number. Unless the articles
20 of incorporation provide otherwise, the bylaws may provide that a number
21 less than a majority shall constitute a quorum which in no case shall be
22 less than $\frac{1}{3}$ of the total number of directors except that, when a board of
23 one director is authorized under the provisions of this section, one direc-
24 tor shall constitute a quorum. The vote of the majority of the directors
25 present at a meeting at which a quorum is present shall be the act of the
26 board of directors, unless the articles of incorporation or the bylaws shall
27 require a vote of a greater number.

28 (c) (1) All corporations incorporated prior to ~~July 1, 2004~~ *January 1,*
29 *2005*, shall be governed by paragraph (2), except that any such corporation
30 may by a resolution adopted by a majority of the whole board elect to be
31 governed by paragraph (3), in which case paragraph (2) shall not apply to
32 such corporation. All corporations incorporated on or after ~~July 1, 2004~~
33 *January 1, 2005*, shall be governed by paragraph (3).

34 (2) The board of directors may designate, by resolution passed by a
35 majority of the whole board, one or more committees, each committee
36 to consist of one or more of the directors of the corporation. The board
37 may designate one or more directors as alternate members of any com-
38 mittee, who may replace any absent or disqualified member at any meet-
39 ing of the committee. The bylaws may provide that, in the absence or
40 disqualification of a member of a committee, the member or members
41 thereof present at any meeting and not disqualified from voting, whether
42 or not such member or members constitute a quorum, may unanimously
43 appoint another member of the board of directors to act at the meeting

1 in the place of any such absent or disqualified member. Any such com-
2 mittee, to the extent provided in the resolution of the board of directors,
3 or in the bylaws of the corporation, shall have and may exercise all the
4 powers and authority of the board of directors in the management of the
5 business and affairs of the corporation and may authorize the seal of the
6 corporation to be affixed to all papers which may require it; and a com-
7 mittee, to the extent authorized in the resolution or resolutions providing
8 for the issuance of shares of stock adopted by the board of directors as
9 provided in K.S.A. 17-6401, and amendments thereto, may fix the des-
10 ignations and any of the preferences or rights of such shares relating to
11 dividends, redemption, dissolution, any distribution of assets of the cor-
12 poration or the conversion into, or the exchange of such shares for, shares
13 of any other class or classes or any other series of the same or any other
14 class or classes of stock of the corporation or fix the number of shares of
15 any series of stock or authorize the increase or decrease of the shares of
16 any series; but no such committee shall have the power or authority in
17 reference to amending the articles of incorporation, adopting an agree-
18 ment of merger or consolidation pursuant to K.S.A. 17-6701 or 17-6702,
19 and amendments thereto, recommending to the stockholders the sale,
20 lease or exchange of all or substantially all of the corporation's property
21 and assets, recommending to the stockholders a dissolution of the cor-
22 poration or a revocation of a dissolution, or amending the bylaws of the
23 corporation; and, unless the resolution, bylaws or articles of incorporation
24 expressly so provide, no such committee shall have the power or authority
25 to declare a dividend or to authorize the issuance of stock or to adopt a
26 certificate of ownership and merger pursuant to K.S.A. 17-6703, and
27 amendments thereto.

28 (3) The board of directors may designate one or more committees,
29 each committee to consist of one or more of the directors of the corpo-
30 ration. The board may designate one or more directors as alternate mem-
31 bers of any committee, who may replace any absent or disqualified mem-
32 ber at any meeting of the committee. The bylaws may provide that in the
33 absence or disqualification of a member of a committee, the member or
34 members present at any meeting and not disqualified from voting,
35 whether or not such member or members constitute a quorum, may
36 unanimously appoint another member of the board of directors to act at
37 the meeting in place of any such absent or disqualified member. Any such
38 committee, to the extent provided in the resolution of the board of di-
39 rectors, or in the bylaws of the corporation, shall have and may exercise
40 all the powers and authority of the board of directors in the management
41 of the business and affairs of the corporation, and may authorize the seal
42 of the corporation to be affixed to all papers which may require it; but
43 no such committee shall have the power or authority in reference to the

1 following matters: (A) Approving or adopting, or recommending to the
2 stockholders, any action or matter expressly required by this act to be
3 submitted to stockholders for approval; or (B) adopting, amending or
4 repealing any bylaw of the corporation.

5 (4) Unless otherwise provided in the articles of incorporation, the
6 bylaws or the resolution of the board of directors designating the com-
7 mittee, a committee may create one or more subcommittees, each sub-
8 committee to consist of one or more members of the committee, and
9 delegate to a subcommittee any or all of the powers and authority of the
10 committee.

11 (d) The directors of any corporation may be divided into one, two or
12 three classes by the articles of incorporation or by an initial bylaw, or by
13 a bylaw adopted by a vote of the stockholders; the term of office of those
14 of the first class to expire at the annual meeting next ensuing; of the
15 second class one year thereafter; of the third class two years thereafter;
16 and at each annual election held after such classification and election,
17 directors shall be chosen for a full term, as the case may be, to succeed
18 those whose terms expire. The articles of incorporation may confer upon
19 holders of any class or series of stock the right to elect one or more
20 directors who shall serve for such term, and have such voting powers, as
21 stated in the articles of incorporation. The terms of office and voting
22 powers of the directors elected in the manner so provided in the articles
23 of incorporation may be greater than or less than those of any other
24 director or class of directors. If the articles of incorporation provide that
25 directors elected by the holders of a class or series of stock shall have
26 more or less than one vote per director on any matter, every reference
27 in this act to a majority or other proportion of directors shall refer to a
28 majority or other proportion of the votes of such directors.

29 (e) A member of the board of directors of any corporation, or a mem-
30 ber of any committee designated by the board of directors, shall be fully
31 protected in the performance of such member's duties in relying in good
32 faith upon the records of the corporation and upon such information,
33 opinions, reports or statements presented to the corporation by any of
34 the corporation's officers or employees, or committees of the board of
35 directors, or by any other person as to matters the member reasonably
36 believes are within such other person's professional or expert competence
37 and who has been selected with reasonable care by or on behalf of the
38 corporation.

39 (f) Unless otherwise restricted by the articles of incorporation or by-
40 laws, any action required or permitted to be taken at any meeting of the
41 board of directors or of any committee thereof may be taken without a
42 meeting if all members of the board or committee, as the case may be,
43 consent thereto in writing or by electronic transmission, and the writing

1 or writings or electronic transmission or transmissions are filed with the
2 minutes of proceedings of the board or committee. Such filing shall be
3 in paper form if the minutes are maintained in paper form and shall be
4 in electronic form if the minutes are maintained in electronic form.

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

8 (h) Unless otherwise restricted by the articles of incorporation or by-
9 laws, the board of directors shall have the authority to fix the compen-
10 sation of directors.

11 (i) Unless otherwise restricted by the articles of incorporation or by-
12 laws, members of the board of directors of any corporation, or any com-
13 mittee designated by such board, may participate in a meeting of such
14 board, or committee by means of conference telephone or similar com-
15 munications equipment by means of which all persons participating in
16 the meeting can hear each other, and participation in a meeting pursuant
17 to this subsection shall constitute presence in person at such meeting.

18 (j) The articles of incorporation of any corporation organized under
19 this act which is not authorized to issue capital stock may provide that
20 less than $\frac{1}{3}$ of the members of the governing body may constitute a quo-
21 rum thereof and may otherwise provide that the business and affairs of
22 the corporation shall be managed in a manner different from that pro-
23 vided in this section. Except as provided by the articles of incorporation,
24 the provisions of this section shall apply to such a corporation and, when
25 so applied, all references to the board of directors, to members thereof
26 and to stockholders shall be deemed to refer to the governing body of
27 the corporation, the members thereof and the members of the corpora-
28 tion respectively.

29 (k) Any number of directors or the entire board of directors may be
30 removed, with or without cause, by the holders of a majority of the out-
31 standing shares then entitled to vote at an election of directors, except as
32 follows:

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

36 (2) in the case of a corporation having cumulative voting for directors,
37 if less than the entire board is to be removed, no director may be removed
38 without cause if the shares voted against such director's removal would
39 be sufficient to elect such director if then cumulatively voted at an elec-
40 tion of the entire board of directors or, if there be classes of directors, at
41 an election of the class of directors of which such director is a part.

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

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

5 Sec. 6. K.S.A. 2004 Supp. 17-6401 is hereby amended to read as
6 follows: 17-6401. (a) Every corporation may issue one or more classes of
7 stock or one or more series of stock within any class thereof, any or all of
8 which classes may be of stock with par value or stock without par value
9 and which classes or series may have such voting powers, full or limited,
10 or no voting powers, and such designations, preferences and relative,
11 participating, optional or other special rights, and qualifications, limita-
12 tions or restrictions thereof, as shall be stated and expressed in the articles
13 of incorporation or of any amendment thereto, or in the resolution or
14 resolutions providing for the issue of such stock adopted by the board of
15 directors pursuant to authority expressly vested in it by the articles of
16 incorporation. Any of the powers, designations, preferences, rights and
17 qualifications, limitations or restrictions of any such class or series of stock
18 may be made dependent upon facts ascertainable outside the articles of
19 incorporation or of any amendment thereto, or outside the resolution or
20 resolutions providing for the issue of such stock adopted by the board of
21 directors pursuant to authority expressly vested in it by the articles of
22 incorporation, provided that the manner in which such facts shall operate
23 upon the ~~voting~~ powers, designations, preferences, rights and qualifica-
24 tions, limitations or restrictions of such class or series of stock is clearly
25 and expressly set forth in the articles of incorporation or in the resolution
26 or resolutions providing for the issue of such stock adopted by the board
27 of directors. The term "facts," as used in this subsection, includes, but is
28 not limited to, the occurrence of any event, including a determination or
29 action by any person or body, including the corporation. The power to
30 increase or decrease or otherwise adjust the capital stock as provided in
31 this act shall apply to all or any such classes of stock.

32 (b) The stock of any class or series may be made subject to redemp-
33 tion by the corporation at its option or at the option of the holders of
34 such stock or upon the happening of a specified event. Immediately fol-
35 lowing any such redemption the corporation shall have outstanding one
36 or more shares of one or more classes or series of stock, which share, or
37 shares together, shall have full voting powers. Notwithstanding the fore-
38 going limitation:

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

43 (2) any stock of a corporation which holds directly or indirectly a

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

7 Any stock which may be made redeemable under this section may be
8 redeemed for cash, property or rights, including securities of the same or
9 another corporation, at such time or times, price or prices, or rate or
10 rates, and with such adjustments, as shall be stated in the articles of
11 incorporation or in the resolution or resolutions providing for the issue
12 of such stock adopted by the board of directors pursuant to subsection
13 (a).

14 (c) The holders of preferred or special stock of any class or of any
15 series thereof shall be entitled to receive dividends at such rates, on such
16 conditions and at such times as shall be stated in the articles of incorpo-
17 ration or in the resolution or resolutions providing for the issue of such
18 stock adopted by the board of directors as hereinabove provided, payable
19 in preference to, or in such relation to, the dividends payable on any other
20 class or classes or of any other series of stock, and cumulative or noncu-
21 mulative as shall be so stated and expressed. When dividends upon the
22 preferred and special stocks, if any, to the extent of the preference to
23 which such stocks are entitled, shall have been paid or declared and set
24 apart for payment, a dividend on the remaining class or classes or series
25 of stock may then be paid out of the remaining assets of the corporation
26 available for dividends as elsewhere in this act provided.

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

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

42 (f) If any corporation shall be authorized to issue more than one class
43 of stock or more than one series of any class, the powers, designations,

1 preferences and relative, participating, optional or other special rights of
2 each class of stock or series thereof and the qualifications, limitations or
3 restrictions of such preferences or rights shall be set forth in full or sum-
4 marized on the face or back of the certificate which the corporation shall
5 issue to represent certificated shares of such class or series of stock. Ex-
6 cept as otherwise provided in K.S.A. 17-6426, and amendments thereto,
7 in lieu of the foregoing requirements, there may be set forth on the face
8 or back of the certificate which the corporation issues to represent such
9 class or series of stock, a statement that the corporation will furnish with-
10 out charge to each stockholder who so requests the powers, designations,
11 preferences and relative, participating, optional or other special rights of
12 each class of stock or series thereof and the qualifications, limitations or
13 restrictions of such preferences or rights, or both. Within a reasonable
14 time after the issuance or transfer of uncertificated stock, the corporation
15 shall send to the registered owner thereof a written notice containing the
16 information required to be set forth or stated on certificates pursuant to
17 this section or K.S.A. 17-6406, subsection (a) of K.S.A. 17-6426 or sub-
18 section (a) of K.S.A. 17-6508, and amendments thereto, or with respect
19 to this section a statement that the corporation will furnish without charge
20 to each stockholder who requests the powers, designations, preferences
21 and relative participating, optional or other special rights of each class of
22 stock or series thereof and the qualifications, limitations or restrictions of
23 such preferences or rights, or both. Except as otherwise expressly pro-
24 vided by law, the rights and obligations of the holders of uncertificated
25 stock and the rights and obligations of the holders of certificates repre-
26 senting stock of the same class and series shall be identical.

27 (g) When any corporation desires to issue any shares of stock of any
28 class or of any series of any class of which the powers, designations, pref-
29 erences and relative, participating, optional or other rights, if any, or the
30 qualifications, limitations or restrictions thereof, if any, shall not have
31 been set forth in the articles of incorporation or in any amendment
32 thereto, but shall be provided for in a resolution or resolutions adopted
33 by the board of directors pursuant to authority expressly vested in it by
34 the articles of incorporation or any amendment thereto, a certificate of
35 designations setting forth a copy of such resolution or resolutions and the
36 number of shares of stock of such class or series shall be executed and
37 filed in accordance with K.S.A. 17-6003, and amendments thereto. Unless
38 otherwise provided in any such resolution or resolutions, the number of
39 shares of stock of any such series to which such resolution or resolutions
40 apply may be increased, but not above the total number of authorized
41 shares of the class, or decreased, but not below the number of shares
42 thereof then outstanding, by a certificate likewise executed and filed set-
43 ting forth a statement that a specified increase or decrease had been

1 authorized and directed by a resolution or resolutions likewise adopted
2 by the board of directors. In case the number of such shares shall be
3 decreased, the number of shares specified in the certificate shall resume
4 the status which they had prior to the adoption of the first resolution or
5 resolutions. When no share of any such class or series are outstanding,
6 either because none were issued or because no issued shares of any such
7 class or series remain outstanding, a certificate setting forth a resolution
8 or resolutions adopted by the board of directors that none of the author-
9 ized shares of such class or series are outstanding and that none will be
10 issued may be executed and filed in accordance with K.S.A. 17-6003, and
11 amendments thereto. When such certificate becomes effective, it shall
12 have the effect of eliminating from the articles of incorporation all refer-
13 ence to such class or series of stock. Unless otherwise provided in the
14 articles of incorporation, if no shares of stock have been issued of a class
15 or series of stock established by a resolution of the board of directors, the
16 powers, designations, preferences and relative, participating, optional or
17 other rights, if any, or the qualifications, limitations or restrictions thereof,
18 may be amended by a resolution or resolutions adopted by the board of
19 directors. A certificate which: (1) States that no shares of the class or
20 series have been issued; (2) sets forth a copy of the resolution or reso-
21 lutions; and (3) if the designation of the class or series is being changed,
22 indicates the original designation and the new designation; shall be exe-
23 cuted and filed and shall become effective in accordance with K.S.A. 17-
24 6003, and amendments thereto. When any certificate filed under this
25 subsection becomes effective, it shall have the effect of amending the
26 articles of incorporation, except that neither the filing of such certificate
27 nor the filing of restated articles of incorporation pursuant to K.S.A. 17-
28 6605, and amendments thereto, shall prohibit the board of directors from
29 subsequently adopting such resolutions as authorized by this subsection.

30 Sec. 7. K.S.A. 2004 Supp. 17-6501 is hereby amended to read as
31 follows: 17-6501. (a) (1) Meetings of stockholders may be held at such
32 place, either within or without this state, as may be designated by or in
33 the manner provided in the articles of incorporation, bylaws or, if not so
34 designated, as determined by the board of directors. If the board of di-
35 rectors is authorized to determine the place of a meeting of stockholders,
36 the board of directors, in its sole discretion, may determine that the meet-
37 ing shall not be held at any place, but may instead be held solely by means
38 of remote communication as authorized by paragraph (a)(2).

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

43 (A) Participate in a meeting of stockholders; and

1 (B) be deemed present in person and vote at a meeting of stockhold-
2 ers whether such meeting is to be held at a designated place or solely by
3 means of remote communication, provided that: (i) The corporation shall
4 implement reasonable measures to verify that each person deemed pres-
5 ent and permitted to vote at the meeting by means of remote commu-
6 nication is a stockholder or proxy holder; (ii) the corporation shall imple-
7 ment reasonable measures to provide such stockholders and proxy holders
8 a reasonable opportunity to participate in the meeting and to vote on
9 matters submitted to the stockholders, including an opportunity to read
10 or hear the proceedings of the meeting substantially concurrently with
11 such proceedings; and (iii) if any stockholder or proxy holder votes or
12 takes other action at the meeting by means of remote communication, a
13 record of such vote or other action shall be maintained by the corporation.

14 (b) Unless directors are elected by written consent in lieu of an an-
15 nual meeting as permitted by this subsection, an annual meeting of stock-
16 holders shall be held for the election of directors on a date and at a time
17 designated by or in the manner provided in the bylaws. Stockholders,
18 unless the articles of incorporation otherwise provide, may act by written
19 consent to elect directors; except that, if such consent is ~~less than~~ unan-
20 imous, such action by written consent may be in lieu of holding an annual
21 meeting only if all of the directorships to which directors could be elected
22 at an annual meeting held at the effective time of such action are vacant
23 and are filled by such action. Any other proper business may be transacted
24 at the annual meeting.

25 (c) (1) If the articles of incorporation or bylaws of a corporation reg-
26 istered under the investment company act of 1940 so provide, the cor-
27 poration is only required to hold an annual meeting in any year in which
28 the election of directors is required to be acted upon under the invest-
29 ment company act of 1940.

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

33 (d) (1) A failure to hold any annual meeting at the designated time
34 or to elect a sufficient number of directors to conduct the business of the
35 corporation shall not affect otherwise valid corporate acts or work a for-
36 feiture or dissolution of the corporation, except as may be otherwise spe-
37 cifically provided in this act. If the annual meeting for election of directors
38 is not held on the date designated therefor or action by written consent
39 to elect directors, in lieu of an annual meeting, has not been taken, the
40 directors shall cause the meeting to be held as soon thereafter as is con-
41 venient. If there be a failure to hold the annual meeting or to take action
42 by written consent to elect directors in lieu of an annual meeting for a
43 period of 30 days after the date designated for the annual meeting, or if

1 no date has been designated for a period of 13 months after the latest to
2 occur of the organization of the corporation, its last annual meeting or
3 the last action by written consent to elect directors in lieu of an annual
4 meeting, the district court may summarily order a meeting to be held
5 upon the application of any stockholder or director. The shares of stock
6 represented at such meeting, either in person or by proxy, and entitled
7 to vote thereat, shall constitute a quorum for the purpose of such meeting,
8 notwithstanding any provision of the articles of incorporation or bylaws
9 to the contrary. The district court may issue such orders as may be ap-
10 propriate, including, without limitation, orders designating the time and
11 place of such meeting, the record date for determination of stockholders
12 entitled to vote and the form of notice of such meeting.

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

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

20 (f) All elections of directors shall be by written ballot, unless other-
21 wise provided in the articles of incorporation. If authorized by the board
22 of directors, such requirement of a written ballot shall be satisfied by a
23 ballot submitted by electronic transmission, provided that any such elec-
24 tronic transmission must either set forth or be submitted with information
25 from which it can be determined that the electronic transmission was
26 authorized by the stockholder or proxy holder.

27 Sec. 8. K.S.A. 2004 Supp. 17-6518 is hereby amended to read as
28 follows: 17-6518. (a) Unless otherwise provided in the articles of incor-
29 poration, any action required by this act to be taken at any annual or
30 special meeting of stockholders of a corporation, or any action which may
31 be taken at any annual or special meeting of such stockholders, may be
32 taken without a meeting, without prior notice and without a vote, if a
33 consent or consents in writing, setting forth the action so taken, are signed
34 by all the holders of outstanding stock entitled to vote. Such consent or
35 consents shall be delivered to the corporation by delivery to its registered
36 office in this state, its principal place of business or an officer or agent of
37 the corporation having custody of the book in which proceedings of meet-
38 ings of stockholders are recorded. ~~Delivery shall be by return receipt~~
39 ~~delivery as defined in K.S.A. 60-303, and amendments thereto, or by~~
40 ~~hand.~~

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

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

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

24 (d) (1) A telegram, cablegram or other electronic transmission con-
25 senting to an action to be taken and transmitted by a stockholder, member
26 or proxy holder, or by a person or persons authorized to act for a stock-
27 holder, member or proxy holder, shall be deemed to be written, signed
28 and dated for the purposes of this section, provided that any such tele-
29 gram, cablegram or other electronic transmission sets forth or is delivered
30 with information from which the corporation can determine: (A) That the
31 telegram, cablegram or other electronic transmission was transmitted by
32 the stockholder, member or proxy holder or by a person or persons au-
33 thorized to act for the stockholder, member or proxy holder; and (B) the
34 date on which such stockholder, member or proxy holder or authorized
35 person or persons transmitted such telegram, cablegram or electronic
36 transmission. The date on which such telegram, cablegram or electronic
37 transmission is transmitted shall be deemed to be the date on which such
38 consent or consents were signed. No consent or consents given by tele-
39 gram, cablegram or other electronic transmission shall be deemed to have
40 been delivered until such consent or consents are reproduced in paper
41 form and until such paper form shall be delivered to the corporation by
42 delivery to its registered office in this state, its principal place of business
43 or an officer or agent of the corporation having custody of the book in

1 which proceedings of meetings of stockholders or members are recorded.
2 ~~Delivery shall be made by return receipt delivery as defined in K.S.A. 60-~~
3 ~~303, and amendments thereto, or by hand.~~ Notwithstanding the foregoing
4 limitations on delivery, any consent or consents given by telegram, cable-
5 gram or other electronic transmission, may be otherwise delivered to the
6 principal place of business of the corporation or to an officer or agent of
7 the corporation having custody of the book in which proceedings of meet-
8 ings of stockholders are recorded if, to the extent and in the manner
9 provided by resolution of the board of directors or governing body of the
10 corporation.

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

16 (e) Prompt notice of the taking of the corporate action without a
17 meeting by less than unanimous written consent shall be given to those
18 members who have not consented in writing and who, if the action had
19 been taken at a meeting, would have been entitled to notice of the meet-
20 ing if the record date for such meeting had been the date that a written
21 consent or consents signed by a sufficient number of ~~holders or~~ members
22 to take the action were delivered to the corporation as provided in sub-
23 section (c). In the event that the action which is consented to is such as
24 would have required the filing of a certificate under any other section of
25 this act, if such action had been voted on by stockholders or by members
26 at a meeting thereof, the certificate filed under such other section shall
27 state, in lieu of any statement required by such section concerning any
28 vote of stockholders or members, that written consent has been given in
29 accordance with the provisions of this section.

30 Sec. 9. K.S.A. 2004 Supp. 17-6701 is hereby amended to read as
31 follows: 17-6701. (a) Any two or more corporations existing under the
32 laws of this state and authorized to issue capital stock *or any corporation*
33 *and limited liability company* may merge into a single corporation, which
34 may be any one of the constituent corporations or they may consolidate
35 into a new corporation formed by the consolidation, pursuant to an agree-
36 ment of merger or consolidation, as the case may be, complying and
37 approved in accordance with this section.

38 (b) The board of directors of each corporation which desires to merge
39 or consolidate shall adopt a resolution approving an agreement of merger
40 or consolidation. The agreement shall state: (1) The terms and conditions
41 of the merger or consolidation; (2) the mode of carrying the same into
42 effect; (3) in the case of a merger, such amendments or changes in the
43 articles of incorporation of the surviving corporation as are desired to be

1 effected by the merger or, if no such amendments or changes are desired,
2 a statement that the articles of incorporation of the surviving corporation
3 shall be its articles of incorporation; (4) in the case of consolidation, that
4 the articles of incorporation of the resulting corporation shall be as is set
5 forth in an attachment to the agreement; (5) the manner, if any, of con-
6 verting the shares of each of the constituent corporations into shares or
7 other securities of the corporation surviving or resulting from the merger
8 or consolidation, or of cancelling some or all of such shares and, if any
9 shares of any of the constituent corporations are not to remain outstand-
10 ing, to be converted solely into shares or other securities of the surviving
11 or resulting corporation or to be cancelled, the cash, property, rights or
12 securities of any other corporation or entity which the holders of such
13 shares are to receive in exchange for, or upon conversion of, such shares
14 and the surrender of any certificates evidencing them, which cash, prop-
15 erty, rights or securities of any other corporation or entity may be in
16 addition to or in lieu of shares or other securities of the surviving or
17 resulting corporation; and (6) such other details or provisions as are
18 deemed desirable, including, without limiting, the generality of the fore-
19 going, a provision for the payment of cash in lieu of the issuance or rec-
20 ognition of fractional shares, interests or rights, or for any other arrange-
21 ment with respect thereto, consistent with the provisions of K.S.A.
22 17-6405, and amendments thereto. The agreement adopted as provided
23 in this subsection shall be executed in accordance with K.S.A. 17-6003,
24 and amendments thereto. Any terms of the agreement of merger or con-
25 solidation may be made dependent upon facts ascertainable outside of
26 such agreement, provided that the manner in which such facts shall op-
27 erate upon the terms of the agreement is clearly and expressly set forth
28 in the agreement of merger or consolidation. The term "facts," as used
29 in the preceding sentence, includes, but is not limited to, the occurrence
30 of any event, including a determination or action by any person or body,
31 including the corporation.

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

35 (2) The terms of the agreement may require that the agreement be
36 submitted to the stockholders whether or not the board of directors de-
37 termines at any time subsequent to declaring its advisability that the
38 agreement is no longer advisable and recommends that the stockholders
39 reject it.

40 (3) Due notice of the time, place and purpose of the meeting shall
41 be mailed to each holder of stock of the corporation, whether voting or
42 nonvoting, at the stockholder's address as it appears on the records of the
43 corporation, at least 20 days prior to the date of the meeting. The notice

1 shall contain a copy of the agreement or a brief summary thereof, as the
2 directors deem advisable.

3 (4) At the meeting the agreement shall be considered and a vote
4 taken for its adoption or rejection. If a majority of the outstanding stock
5 of the corporation entitled to vote thereon shall be voted for the adoption
6 of the agreement, that fact shall be certified on the agreement by the
7 secretary or assistant secretary of the corporation. If the agreement is
8 adopted and certified by each constituent corporation, it shall then be
9 executed and filed, and shall become effective, in accordance with K.S.A.
10 17-6003, and amendments thereto.

11 (5) In lieu of filing the agreement of merger or consolidation, the
12 surviving or resulting corporation may file a certificate of merger or con-
13 solidation, executed in accordance with K.S.A. 17-6003, and amendments
14 thereto, which states: (A) The name and state of incorporation of each of
15 the constituent corporations; (B) that an agreement of merger or consol-
16 idation has been approved, adopted, certified and executed by each of
17 the constituent corporations in accordance with this section; (C) the name
18 of the surviving or resulting corporation; (D) in the case of a merger, such
19 amendments or changes in the articles of incorporation of the surviving
20 corporation as are desired to be effected by the merger or, if no such
21 amendments or changes are desired, a statement that the articles of in-
22 corporation of one of the constituent corporations shall be the articles of
23 incorporation of the surviving corporation; (E) in the case of a consoli-
24 dation, that the articles of incorporation of the resulting corporation shall
25 be as is set forth in an attachment to the certificate; (F) that the executed
26 agreement of consolidation or merger is on file at the principal place of
27 business of the surviving or resulting corporation, stating the address
28 thereof; and (G) that a copy of the agreement of consolidation or merger
29 will be furnished by the surviving or resulting corporation, on request and
30 without cost, to any stockholder of any constituent corporation.

31 (d) Any agreement of merger or consolidation may contain a provi-
32 sion that at any time prior to the time that the agreement, or certificate
33 in lieu thereof, filed with the secretary of state becomes effective in ac-
34 cordance with K.S.A. 17-6003, and amendments thereto, the agreement
35 may be terminated by the board of directors of any constituent corpora-
36 tion notwithstanding approval of the agreement by the stockholders of all
37 or any of the constituent corporations; in the event the agreement of
38 merger or consolidation is terminated after the filing of the agreement,
39 or a certificate, with the secretary of state but before the agreement, or
40 certificate, has become effective, a certificate of termination of merger
41 or consolidation shall be filed in accordance with K.S.A. 17-6003, and
42 amendments thereto. Any agreement of merger or consolidation may con-
43 tain a provision that the boards of directors of the constituent corporations

1 may amend the agreement at any time prior to the filing of the agreement,
2 or a certificate in lieu thereof, with the secretary of state, except that an
3 amendment made subsequent to the adoption of the agreement by the
4 stockholders of any constituent corporation shall not: (1) Alter or change
5 the amount or kind of shares, securities, cash, property or rights, or any
6 combination, to be received in exchange for or on conversion of all or any
7 of the shares of any class or series thereof of such constituent corporation;
8 (2) alter or change any term of the articles of incorporation of the surviv-
9 ing or resulting corporation to be effected by the merger or consolidation;
10 or (3) alter or change any of the terms and conditions of the agreement
11 if such alteration or change would adversely affect the holders of any class
12 or series thereof of such constituent corporation. In the event the agree-
13 ment of merger or consolidation is amended after the filing of such
14 merger or consolidation with the secretary of state but before the agree-
15 ment has become effective, a certificate of amendments of merger or
16 consolidation shall be filed in accordance with K.S.A. 17-6003, and
17 amendments thereto.

18 (e) In the case of a merger, the articles of incorporation of the sur-
19 viving corporation shall automatically be amended to the extent, if any,
20 that changes in the articles of incorporation are set forth in the agreement
21 of merger.

22 (f) (1) Notwithstanding the requirements of subsection (c), unless
23 required by its articles of incorporation, no vote of stockholders of a con-
24 stituent corporation surviving a merger shall be necessary to authorize a
25 merger if: (A) The agreement of merger does not amend in any respect
26 the articles of incorporation of such constituent corporation; (B) each
27 share of stock of such constituent corporation outstanding immediately
28 prior to the effective date of the merger is to be an identical outstanding
29 or treasury share of the surviving corporation after the effective date of
30 the merger; and (C) either no shares of common stock of the surviving
31 corporation and no shares, securities or obligations convertible into such
32 stock are to be issued or delivered under the plan of merger, or the
33 authorized unissued shares or the treasury shares of common stock of the
34 surviving corporation to be issued or delivered under the plan of merger
35 plus those initially issuable upon conversion of any other shares, securities
36 or obligations to be issued or delivered under such plan do not exceed
37 20% of the shares of common stock of such constituent corporation out-
38 standing immediately prior to the effective date of the merger.

39 (2) No vote of stockholders of a constituent corporation shall be nec-
40 essary to authorize a merger or consolidation if no shares of the stock of
41 such corporation shall have been issued prior to the adoption by the board
42 of directors of the resolution approving the agreement of merger or con-
43 solidation. If an agreement of merger is adopted by the constituent cor-

1 poration surviving the merger, by action of its board of directors and
2 without any vote of its stockholders pursuant to this subsection, the sec-
3 retary or assistant secretary of that corporation shall certify on the agree-
4 ment that the agreement has been adopted pursuant to this subsection
5 and: (A) If it has been adopted pursuant to the first sentence of this
6 subsection, that the conditions specified in that sentence have been sat-
7 isfied, or (B) if it has been adopted pursuant to the second sentence of
8 this subsection, that no shares of stock of such corporation were issued
9 prior to the adoption by the board of directors of the resolution approving
10 the agreement of merger or consolidation.

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

16 (g) Notwithstanding the requirements of subsection (c), unless ex-
17 pressly required by its articles of incorporation, no vote of stockholders
18 of a constituent corporation shall be necessary to authorize a merger with
19 or into a single direct or indirect wholly-owned subsidiary of such con-
20 stituent corporation if:

21 (1) Such constituent corporation and the direct or indirect wholly-
22 owned subsidiary of such constituent corporation are the only constituent
23 entities to the merger;

24 (2) each share or fraction of a share of the capital stock of the con-
25 stituent corporation outstanding immediately prior to the effective time
26 of the merger is converted in the merger into a share or equal fraction
27 of share of capital stock of a holding company having the same designa-
28 tions, rights, powers and preferences, and the qualifications, limitations
29 and restrictions thereof, as the share of stock of the constituent corpo-
30 ration being converted in the merger;

31 (3) the holding company and the constituent corporations are cor-
32 porations of this state and the direct or indirect wholly-owned subsidiary
33 that is the other constituent entity to the merger is a corporation or lim-
34 ited liability company of this state;

35 (4) the articles of incorporation and bylaws of the holding company
36 immediately following the effective time of the merger contain provisions
37 identical to the articles of incorporation and bylaws of the constituent
38 corporation immediately prior to the effective time of the merger, other
39 than provisions, if any, regarding the incorporator or incorporators, the
40 corporate name, the registered office and agent, the initial board of di-
41 rectors and the initial subscribers for shares and such provisions contained
42 in any amendment to the articles of incorporation as were necessary to
43 effect a change, exchange, reclassification, subdivision, combination or

1 cancellation of stock, if such change, exchange, reclassification, subdivi-
2 sion, combination or cancellation has become effective;

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

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

9 (7) (A) the organizational documents of the surviving entity imme-
10 diately following the effective time of the merger contain provisions iden-
11 tical to the articles of incorporation of the constituent corporation im-
12 mediately prior to the effective time of the merger, other than provisions,
13 if any, regarding the incorporator or incorporators, the corporate or entity
14 name, the registered office and agent, the initial board of directors and
15 the initial subscribers for shares, references to members rather than
16 stockholders or shareholders, references to interests, units or the like
17 rather than stock or shares, references to managers, managing members
18 or other members of the governing body rather than directors and such
19 provisions contained in any amendment to the articles of incorporation
20 as were necessary to effect a change, exchange, reclassification, subdivi-
21 sion, combination or cancellation of stock, if such change, exchange, re-
22 classification, subdivision, combination or cancellation has become
23 effective.

24 (B) If the organizational documents of the surviving entity do not
25 contain the following provisions, such documents shall be amended in the
26 merger to contain provisions requiring that: (i) Any act or transaction by
27 or involving the surviving entity, other than the election or removal of
28 directors or managers, managing members or other members of the gov-
29 erning body of the surviving entity, that requires for its adoption under
30 this act or its organizational documents the approval of the stockholders
31 or members of the surviving entity shall, by specific reference to this
32 subsection, require, in addition, the approval of the stockholders of the
33 holding company, or any successor by merger, by the same vote as is
34 required by this act or by the organizational documents of the surviving
35 entity, or both. For purposes of this clause, any surviving entity that is
36 not a corporation shall include in such amendments a requirement that
37 the approval of the stockholders of the holding company be obtained for
38 any act or transaction by or involving the surviving entity, other than the
39 election or removal of directors or managers, managing members or other
40 members of the governing body of the surviving entity, which would re-
41 quire the approval of the stockholders of the surviving entity if the sur-
42 viving entity were a corporation subject to this act;

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

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

8 (iii) the business and affairs of a surviving entity that is not a corpo-
9 ration shall be managed by or under the direction of a board of directors,
10 board of managers or other governing body consisting of individuals who
11 are subject to the same fiduciary duties applicable to, and who are liable
12 for breach of such duties to the same extent as, directors of a corporation
13 subject to this act. Neither the provisions of this subsection nor any pro-
14 vision of a surviving entity's organizational documents required by this
15 subsection shall be deemed or construed to require approval of the stock-
16 holders of the holding company to elect or remove directors or managers,
17 managing members or other members of the governing body of the sur-
18 viving entity.

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

23 (D) As used in this subsection only, the term "organizational docu-
24 ments," when used in reference to a corporation, means the articles of
25 incorporation of such corporation and, when used in reference to a lim-
26 ited liability company, means the articles of organization or operating
27 agreement of such limited liability company; the term "holding company"
28 means a corporation which, from its incorporation until consummation of
29 a merger governed by this subsection, was at all times a direct or indirect
30 wholly-owned subsidiary of the constituent corporation and whose capital
31 stock is issued in such merger. From and after the effective time of a
32 merger adopted by a constituent corporation by action of its board of
33 directors and without any vote of stockholders pursuant to this subsection:

34 (i) To the extent the restriction of K.S.A. 17-12,100 *et seq.*, and amend-
35 ments thereto, applied to the constituent corporation and its stockholders
36 the effective time of the merger such restrictions shall apply to the hold-
37 ing company and its stockholders immediately after the effective time of
38 the merger as though it were the constituent corporation, and all shares
39 of stock of the holding company acquired in the merger shall for the
40 purposes of K.S.A. 17-12,100 *et seq.*, and amendments thereto, be
41 deemed to have been acquired at the time that the shares of stock of the
42 constituent corporation converted in the merger were acquired, and pro-
43 vided further that any stockholder who immediately prior to the effective

1 time of the merger was not an interested stockholder within the meaning
2 of K.S.A. 17-12,100 *et seq.*, and amendments thereto, shall not solely by
3 reason of the merger become an interested stockholder of the holding
4 company; and (ii) if the corporate name of the holding company imme-
5 diately following the effective time of the merger is the same as the cor-
6 porate name of the constituent corporation immediately prior to the ef-
7 fective time of the merger, the shares of capital stock of the holding
8 company into which the shares of capital stock of the constituent corpo-
9 ration are converted in the merger shall be represented by the stock
10 certificates that previously represented shares of capital stock of the con-
11 stituent corporation and to the extent a stockholder of the constituent
12 corporation immediately prior to the merger had standing to institute or
13 maintain derivative litigation on behalf of the constituent corporation,
14 nothing in this section shall be deemed to limit or extinguish such stand-
15 ing. If an agreement of merger is adopted by a constituent corporation
16 by action of its board of directors and without any vote of stockholders
17 pursuant to this subsection, the secretary or assistant secretary of the
18 constituent corporation shall certify on the agreement or a certificate of
19 merger that the agreement has been adopted pursuant to this subsection
20 and that the conditions specified in the first sentence of this subsection
21 have been satisfied. The agreement or certificate of merger so adopted
22 and certified shall then be filed and become effective, in accordance with
23 K.S.A. 17-6003, and amendments thereto. Such filing shall constitute a
24 representation by the person who executes the agreement or certificate
25 of merger that the facts stated in the certificate remain true immediately
26 prior to such filing.

27 Sec. 10. K.S.A. 2004 Supp. 17-6705 is hereby amended to read as
28 follows: 17-6705. (a) Any two or more nonstock corporations of this state,
29 whether or not organized for profit, may merge into a single corporation,
30 which may be any one of the constituent corporations, or they may con-
31 solidate into a new nonstock corporation, whether or not organized for
32 profit, formed by the consolidation, pursuant to an agreement of merger
33 or consolidation, as the case may be, complying and approved in accord-
34 ance with this section.

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

1 memberships of the corporation surviving or resulting from the merger
2 or consolidation, or of cancelling some or all of such memberships inter-
3 ests; and (5) such other details or provisions as are deemed desirable. Any
4 of the terms of the agreement of merger or consolidation may be made
5 dependent upon facts ascertainable outside of such agreement, provided
6 that the manner in which such facts shall operate upon the terms of the
7 agreement is clearly and expressly set forth in the agreement of merger
8 or consolidation. The term “facts,” as used in the preceding sentence,
9 includes, but is not limited to, the occurrence of any event, including a
10 determination or action by any person or body, including the corporation.

11 (c) The agreement shall be submitted to the members of each con-
12 stituent corporation who have the right to vote for the election of the
13 members of the governing body of their corporation, at an annual or
14 special meeting thereof for the purpose of acting on the agreement. Due
15 notice of the time, place and purpose of the meeting shall be mailed to
16 each member of each such corporation who has the right to vote for the
17 election of the members of the governing body of such corporation, at
18 the member’s address as it appears on the records of the corporation, at
19 least 20 days prior to the date of the meeting. The notice shall contain a
20 copy of the agreement or a brief summary thereof, as the governing body
21 shall deem advisable. At the meeting the agreement shall be considered
22 and a vote by ballot, in person or by proxy, taken for the adoption or
23 rejection of the agreement, each member who has the right to vote for
24 the election of the members of the governing body of such member’s
25 corporation being entitled to one vote. If a majority of the voting power
26 of members of each such corporation who have the voting power above
27 mentioned shall be for the adoption of the agreement or, in the case of
28 a nonstock, nonprofit corporation, other than a nonprofit dental service
29 corporation organized and operated under the nonprofit dental service
30 corporation act, cited at K.S.A. 40-19a01 *et seq.*, and amendments
31 thereto, if a majority of the total number of members voting at an annual
32 or special meeting for the purpose of acting on the agreement vote for
33 the adoption of the agreement, then that fact shall be certified on the
34 agreement by the officer of each such corporation performing the duties
35 ordinarily performed by the secretary or assistant secretary of a corpo-
36 ration. The agreement so adopted and certified shall be executed and
37 filed, and shall become effective, in accordance with K.S.A. 17-6003, and
38 amendments thereto. The provisions set forth in the last sentence of sub-
39 section (c) of K.S.A. 17-6701, and amendments thereto, shall apply to a
40 merger under this section, and the reference to “stockholder” shall be
41 deemed to include “member” hereunder.

42 (d) If, under the provisions of the articles of incorporation of any one
43 or more of the constituent corporations, there shall be no members who

1 have the right to vote for the election of the members of the governing
2 body of the corporation other than the members of that body themselves,
3 the agreement duly entered into as provided in subsection (b) shall be
4 submitted to the members of the governing body of such corporation or
5 corporations, at a meeting of such corporation or corporations. Notice of
6 the meeting shall be mailed to the members of the governing body in the
7 same manner as is provided in the case of a meeting of the members of
8 a corporation. If at the meeting ~~2/3 of the total number~~ *a majority* of
9 members of the governing body shall vote by ballot, in person, for the
10 adoption of the agreement, that fact shall be certified on the agreement
11 in the same manner as is provided in the case of the adoption of the
12 agreement by the vote of the members of a corporation. The same pro-
13 cedure shall be followed to consummate the merger or consolidation.

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

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

22 Sec. 11. K.S.A. 2004 Supp. 17-7693 is hereby amended to read as
23 follows: 17-7693. (a) Unless otherwise provided in an operating agree-
24 ment, the management of a limited liability company shall be vested in
25 its members in proportion to the then current percentage or other inter-
26 est of members in the profits of the limited liability company owned by
27 all of the members, the decision of members owning more than 50% of
28 the percentage or other interest in the profits controlling; provided how-
29 ever, that if an operating agreement provides for the management, in
30 whole or in part, of a limited liability company by a manager, the man-
31 agement of the limited liability company, to the extent so provided, shall
32 be vested in the manager who shall be chosen by the members in the
33 manner provided in the operating agreement. The manager shall also hold
34 the offices and have the responsibilities accorded to the manager by the
35 members and set forth in an operating agreement. Subject to K.S.A. 2004
36 Supp. 17-76,105, and amendments thereto, a manager shall cease to be
37 a manager as provided in an operating agreement. A limited liability com-
38 pany may have more than one manager. ~~Unless otherwise provided in an~~
39 ~~operating agreement, each member in a member managed LLC has the~~
40 ~~authority to bind the limited liability company, and each manager, in a~~
41 ~~manager managed LLC has the authority to bind the LLC.~~

42 (b) *Except as provided in subsection (c), every member is an agent of*
43 *the limited liability company for the purpose of its business and affairs,*

1 *and the act of any member, including, but not limited to, the execution of*
 2 *any instrument, for apparently carrying on in the usual way of the busi-*
 3 *ness or affairs of the limited liability company of which the member is a*
 4 *member binds the limited liability company, unless the member so acting*
 5 *has in fact no authority to act for the limited liability company in the*
 6 *particular matter, and the person with whom the member is dealing has*
 7 *knowledge of the fact that the member has not such authority.*

8 ~~(c) If the articles of organization provide~~ *operating agreement pro-*
 9 *vides that management of the limited liability company is vested in one*
 10 *or more managers: (1) No member acting solely in the member's capacity*
 11 *as a member, is an agent of the limited liability company; and (2) every*
 12 *manager is an agent of the limited liability company for the purpose of*
 13 *its business and affairs, and the act of any manager for apparently carrying*
 14 *on the usual way of the business or affairs of the limited liability of which*
 15 *the manager is a manager binds the limited liability company, unless the*
 16 *manager so acting has, in fact, no authority to act for the limited liability*
 17 *company in the particular matter, and the person with whom the manager*
 18 *is dealing has knowledge of the fact that the manager has no such*
 19 *authority.*

20 ~~(c)~~ *(d) An act of a member or manager which apparently is not for*
 21 *carrying on the usual way of the business or affairs of the limited liability*
 22 *company does not bind the limited liability company unless authorized in*
 23 *accordance with the terms of the ~~articles of organization or~~ operating*
 24 *agreement, at the time of the transaction or at any other time. Unless*
 25 *otherwise provided in the ~~articles of organization or~~ operating agreement,*
 26 *a transaction not in the ordinary course of the business or affairs of the*
 27 *limited liability company must be approved by a majority *in interest*, by*
 28 *number, of the members of the limited liability company.*

29 *Sec. 12. K.S.A. 2004 Supp. 17-76,105 is hereby amended to read as*
 30 *follows: 17-76,105. A manager may resign as a manager of a limited li-*
 31 *ability company at the time or upon the happening of events specified ~~in~~*
 32 *agreement and in accordance with the ~~limited liability company~~ operating*
 33 *agreement. An operating agreement may provide that a manager shall*
 34 *not have the right to resign as a manager of a limited liability company.*
 35 *Notwithstanding that an operating agreement provides that a manager*
 36 *does not have the right to resign as a manager of a limited liability com-*
 37 *pany, a manager may resign as a manager of a limited liability company*
 38 *at any time by giving written notice to the members and other managers.*
 39 *If the resignation of a manager violates an operating agreement, in ad-*
 40 *dition to any remedies otherwise available under applicable law, a limited*
 41 *liability company may recover from the resigning manager damages for*
 42 *breach of the operating agreement and offset the damages against the*
 43 *amount otherwise distributable to the resigning manager.*

1 Sec. 13. K.S.A. 2004 Supp. 17-76,106 is hereby amended to read as
2 follows: 17-76,106. A member may resign from a limited liability company
3 ~~only~~ at the time or upon the happening of events specified in ~~agreement~~
4 ~~and in~~ accordance with the operating agreement. Notwithstanding any-
5 thing to the contrary under applicable law, unless the operating agree-
6 ment provides otherwise, a member may resign from a limited liability
7 company prior to the dissolution and winding up of the limited liability
8 company. Upon resignation the member shall be deemed to be an as-
9 signee and shall have only the rights of an assignee. The resigned member
10 is not released from the member's liability, if any, to a limited liability
11 company. Notwithstanding anything to the contrary under applicable law,
12 the operating agreement may provide that a limited liability company
13 interest may not be assigned prior to the dissolution and winding up of
14 the limited liability company.

15 Sec. 14. K.S.A. 2004 Supp. 17-2030, 17-4634, 17-4677, 17-6003, 17-
16 6301, 17-6401, 17-6501, 17-6518, 17-6701, 17-6705, 17-7693, 17-76,105
17 and 17-76,106 are hereby repealed.

18 Sec. 15. This act shall take effect and be in force from and after its
19 publication in the statute book.