As Amended by House Committee

Session of 2019

HOUSE BILL No. 2401

By Committee on Federal and State Affairs

3-19

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

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

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

1. The holders of a majority of the shares entitled to vote, present in person or represented by proxy, shall constitute a quorum at a meeting of stockholders;
2. in all matters other than the election of directors, the affirmative vote of the holders of a majority of shares who are present in person or represented by proxy at the meeting and entitled to vote on the subject matter shall be the act of the stockholders;
3. directors shall be elected by a plurality of the votes of the shares present in person or represented by proxy at the meeting and entitled to vote on the election of directors; and
4. where a separate vote by one or more than one class or series is required, the holders of a majority of the outstanding shares of such class or series, present in person or represented by proxy, shall constitute a quorum entitled to take action with respect to that vote on that matter and, in all matters other than the election of directors, the affirmative vote of the holders of a majority of shares of such class or series who are present.
in person or represented by proxy at the meeting shall be the act of such class or series. A bylaw amendment adopted by the stockholders which specifies the votes that shall be necessary for the election of directors shall not be further amended or repealed by the board of directors.

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

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

(1) To change its corporate name;
(2) to change, substitute, enlarge or diminish the nature of its business or its corporate powers and purposes;
(3) to increase or decrease its authorized capital stock or to reclassify the same, by changing the number, par value, designations, preferences, or relative, participating, optional or other special rights of the shares, or the qualifications, limitations or restrictions of such rights, or by changing shares with par value into shares without par value, or shares without par value into shares with par value either with or without increasing or decreasing the number of shares, or by subdividing or combining the outstanding shares of any class or series into a greater or lesser number of outstanding shares;
(4) to cancel or otherwise affect the right of the holders of the shares of any class to receive dividends which have accrued but have not been declared;
(5) to create new classes of stock having rights and preferences either prior and superior or subordinate and inferior to the stock of any class then authorized, whether issued or unissued;
(6) to change the period of its duration. Any or all such changes or
alterations may be effected by one certificate of amendment; or

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

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

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

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

(2) The holders of the outstanding shares of a class shall be entitled to vote as a class upon a proposed amendment, whether or not entitled to vote thereon by the provisions of the articles of incorporation, if the amendment
would increase or decrease the aggregate number of authorized shares of
such class, increase or decrease the par value of the shares of such class, or
alter or change the powers, preferences or special rights of the shares of
such class so as to affect them adversely. If any proposed amendment
would alter or change the powers, preferences or special rights of one or
more series of any class so as to affect them adversely, but does not affect
the entire class, then only the shares of the series affected by the
amendment shall be considered a separate class for the purposes of this
subsection. The number of authorized shares of any such class or classes
of stock may be increased or decreased, but not below the number of
shares thereof then outstanding, by the affirmative vote of the holders of a
majority of the stock of the corporation entitled to vote irrespective of this
paragraph, if so provided in the original articles of incorporation, in any
amendment thereto which created such class or classes of stock or which
was adopted prior to the issuance of any shares of such class or classes of
stock or in any amendment thereto which was authorized by a resolution
or resolutions adopted by the affirmative vote of the holders of a majority
of such class or classes of stock.

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

(4) Whenever the articles of incorporation shall require for action by
the board of directors of a corporation other than a nonstock corporation or
by the governing body of a nonstock corporation, by the holders of any
class or series of shares or by the members, or by the holders of any other
securities having voting power the vote of a greater number or proportion
than is required by any section of this code, the provision of the articles of
incorporation requiring such greater vote shall not be altered, amended or
repealed except by such greater vote.
(c) The resolution authorizing a proposed amendment to the articles of incorporation may provide that at any time prior to the effectiveness of the filing of the amendment with the secretary of state, notwithstanding authorization of the proposed amendment by the stockholders of the corporation or by the members of a nonstock corporation, the board of directors or governing body may abandon such proposed amendment without further action by the stockholders or members.

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

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