

## 2020 Kansas Statutes

**17-6428. Ratification of defective corporate acts and stock.** (a) Subject to subsection (f), no defective corporate act or putative stock shall be void or voidable solely as a result of a failure of authorization if ratified as provided in this section or validated by the district court in a proceeding brought under K.S.A. 2020 Supp. 17-6429, and amendments thereto.

(b) (1) In order to ratify one or more defective corporate acts pursuant to this section, other than the ratification of an election of the initial board of directors pursuant to subsection (b)(2), the board of directors of the corporation shall adopt resolutions stating:

- (A) The defective corporate act or acts to be ratified;
- (B) the date of each defective corporate act or acts;
- (C) if such defective corporate act or acts involved the issuance of shares of putative stock, the number and type of shares of putative stock issued and the date or dates upon which such putative shares were purported to have been issued;
- (D) the nature of the failure of authorization in respect of each defective corporate act to be ratified; and
- (E) that the board of directors approves the ratification of the defective corporate act or acts.

Such resolutions may also provide that, at any time before the validation effective time in respect to any defective corporate act set forth therein, notwithstanding the approval of the ratification of such defective corporate act by stockholders, the board of directors may abandon the ratification of such defective corporate act without further action of the stockholders. The quorum and voting requirements applicable to the ratification by the board of directors of any defective corporate act shall be the quorum and voting requirements applicable to the type of defective corporate act proposed to be ratified at the time the board adopts the resolutions ratifying the defective corporate act, except that if the articles of incorporation or bylaws of the corporation, any plan or agreement to which the corporation was a party or any provision of the Kansas general corporation code, in each case as in effect as of the time of the defective corporate act, would have required a larger number or portion of directors or of specified directors for a quorum to be present or to approve the defective corporate act, such larger number or portion of such directors or such specified directors shall be required for a quorum to be present or to adopt the resolutions to ratify the defective corporate act, as applicable, except that the presence or approval of any director elected, appointed or nominated by holders of any class or series of which no shares are then outstanding, or by any person that is no longer a stockholder, shall not be required.

(2) In order to ratify a defective corporate act in respect of the election of the initial board of directors of the corporation pursuant to K.S.A. 17-6008, and amendments thereto, a majority of the persons who, at the time the resolutions required by this paragraph are adopted, are exercising the powers of directors under claim and color of an election or appointment as such may adopt resolutions stating:

- (A) The name of the person or persons who first took action in the name of the corporation as the initial board of directors of the corporation;
- (B) the earlier of the date on which such persons first took such action or were purported to have been elected as the initial board of directors; and
- (C) that the ratification of the election of such person or persons as the initial board of directors is approved.

(c) Each defective corporate act ratified pursuant to subsection (b)(1) shall be submitted to stockholders for approval as provided in subsection (d), unless:

(1) No other provision of the Kansas general corporation code, and no provision of the articles of incorporation or bylaws of the corporation, or of any plan or agreement to which the corporation is a party, would have required stockholder approval of such defective corporate act to be ratified, either at the time of such defective corporate act or at the time the board of directors adopts the resolutions ratifying such defective corporate act pursuant to subsection (b)(1); and

(2) such defective corporate act did not result from a failure to comply with K.S.A.

2020 Supp. 17-6427, and amendments thereto.

(d) If the ratification of a defective corporate act is required to be submitted to stockholders for approval pursuant to subsection (c), due notice of the time, place, if any, and purpose of the meeting shall be given at least 20 days before the date of the meeting to each holder of valid stock and putative stock, whether voting or nonvoting, at the address of such holder as it appears or most recently appeared, as appropriate, on the records of the corporation. The notice also shall be given to the holders of record of valid stock and putative stock, whether voting or nonvoting, as of the time of the defective corporate act, other than holders whose identities or addresses cannot be determined from the records of the corporation. The notice shall contain a copy of the resolutions adopted by the board of directors pursuant to subsection (b) (1) or the information required by subsection (b)(1)(A) through (E) and a statement that any claim that the defective corporate act or putative stock ratified hereunder is void or voidable due to the failure of authorization, or that the district court should declare in its discretion that a ratification in accordance with this section not be effective or be effective only on certain conditions must be brought within 120 days from the applicable validation effective time. At such meeting, the quorum and voting requirements applicable to the ratification of such defective corporate act shall be the quorum and voting requirements applicable to the type of defective corporate act proposed to be ratified at the time of the approval of the ratification, except that:

(1) If the articles of incorporation or bylaws of the corporation, any plan or agreement to which the corporation was a party or any provision of the Kansas general corporation code in effect as of the time of the defective corporate act would have required a larger number or portion of stock or of any class or series thereof or of specified stockholders for a quorum to be present or to approve the defective corporate act, the presence or approval of such larger number or portion of stock or of such class or series thereof or of such specified stockholders shall be required for a quorum to be present or to approve the ratification of the defective corporate act, as applicable, except that the presence or approval of shares of any class or series of which no shares are then outstanding, or of any person that is no longer a stockholder, shall not be required;

(2) the approval by stockholders of the ratification of the election of a director shall require the affirmative vote of the majority of shares present at the meeting and entitled to vote on the election of such director, except that if the articles of incorporation or bylaws of the corporation then in effect or in effect at the time of the defective election require or required a larger number or portion of stock or of any class or series thereof or of specified stockholders to elect such director, the affirmative vote of such larger number or portion of stock or of any class or series thereof or of such specified stockholders shall be required to ratify the election of such director, except that the presence or approval of shares of any class or series of which no shares are then outstanding, or of any person that is no longer a stockholder, shall not be required; and

(3) in the event of a failure of authorization resulting from failure to comply with the provisions of K.S.A. 2020 Supp. 17-6427, and amendments thereto, the ratification of the defective corporate act shall require the vote set forth in K.S.A. 2020 Supp. 17-6427(a)(3), and amendments thereto, regardless of whether such vote would have otherwise been required.

Shares of putative stock on the record date for determining stockholders entitled to vote on any matter submitted to stockholders pursuant to subsection (c), and without giving effect to any ratification that becomes effective after such record date, shall neither be entitled to vote nor counted for quorum purposes in any vote to ratify any defective corporate act.

(e) If a defective corporate act ratified pursuant to this section would have required under any other section of the Kansas general corporation code the filing of a document in accordance with K.S.A. 2020 Supp. 17-7910, and amendments thereto, then, whether or not a document was previously filed in respect to such defective corporate act and in lieu of filing the document otherwise required by provisions of the Kansas general corporation code, the corporation shall file a certificate of validation with respect to such defective corporate act in accordance with K.S.A. 2020 Supp. 17-7910, and amendments thereto. A separate certificate of validation shall be

required for each defective corporate act requiring the filing of a certificate of validation under this section, except that two or more defective corporate acts may be included in a single certificate of validation if the corporation filed, or to comply with provisions of the Kansas general corporation code, would have filed, a single document under another provision of the Kansas general corporation code to effect such acts, and two or more overissues of shares of any class, classes or series of stock may be included in a single certificate of validation, provided that the increase in the number of authorized shares of each such class or series set forth in the certificate of validation shall be effective as of the date of the first such overissue. The certificate of validation shall set forth:

- (1) Each defective corporate act that is the subject of the certificate of validation, including, in the case of any defective corporate act involving the issuance of shares of putative stock, the number and type of shares of putative stock issued and the date or dates upon which such putative shares were purported to have been issued, the date of such defective corporate act, and the nature of the failure of authorization in respect to such defective corporate act;
  - (2) a statement that such defective corporate act was ratified in accordance with this section, including the date on which the board of directors ratified such defective corporate act and the date, if any, on which the stockholders approved the ratification of such defective corporate act; and
  - (3) the information required by one of the following subparagraphs:
    - (A) If a document was previously filed under K.S.A. 2020 Supp. 17-7910, and amendments thereto, in respect to such defective corporate act and no changes to such document are required to give effect to such defective corporate act in accordance with this section, the certificate of validation shall set forth: (i) The name, title and filing date of the document previously filed and of any certificate of correction thereto; and (ii) a statement that a copy of the document previously filed, together with any certificate of correction thereto, is attached as an exhibit to the certificate of validation;
    - (B) if a document was previously filed under K.S.A. 2020 Supp. 17-7910, and amendments thereto, in respect to the defective corporate act and such document requires any change to give effect to the defective corporate act in accordance with this section, including a change to the date and time of the effectiveness of such certificate, the certificate of validation shall set forth: (i) The name, title and filing date of the document so previously filed and of any certificate of correction thereto; (ii) a statement that a document containing all of the information required to be included under the applicable section or sections of the Kansas general corporation code to give effect to the defective corporate act is attached as an exhibit to the certificate of validation; and (iii) the date that such certificate shall be deemed to have become effective pursuant to this section; or
    - (C) if a document was not previously filed under K.S.A. 2020 Supp. 17-7910, and amendments thereto, in respect to the defective corporate act and the defective corporate act ratified pursuant to this section would have required under any other section of the Kansas general corporation code the filing of a document in accordance with K.S.A. 2020 Supp. 17-7910, and amendments thereto, the certificate of validation shall set forth: (i) A statement that a document containing all of the information required to be included under the applicable section or sections of the Kansas general corporation code to give effect to the defective corporate act is attached as an exhibit to the certificate of validation; and (ii) the date and time that such certificate shall be deemed to have become effective pursuant to this section.
  - (4) A document attached to a certificate of validation pursuant to paragraph (3)(B) or (C) need not be separately executed and acknowledged and need not include any statement required by any other section of the Kansas general corporation code that such document has been approved and adopted in accordance with the provisions of such other section.
- (f) From and after the validation effective time, unless otherwise determined in an action brought pursuant to K.S.A. 2020 Supp. 17-6429, and amendments thereto:
- (1) Subject to the last sentence of subsection (d), each defective corporate act ratified in accordance with this section shall no longer be deemed void or voidable as a result of a the failure of authorization described in the resolutions adopted pursuant

to subsection (b) and such effect shall be retroactive to the time of the defective corporate act; and

(2) subject to the last sentence of subsection (d), each share or fraction of a share of putative stock issued or purportedly issued pursuant to any such defective corporate act shall no longer be deemed void or voidable and shall be deemed to be an identical share or fraction of a share of outstanding stock as of the time it was purportedly issued.

(g) (1) In respect of each defective corporate act ratified by the board of directors pursuant to subsection (b), prompt notice of the ratification shall be given to all holders of valid stock and putative stock, whether voting or nonvoting, as of the date the board of directors adopts the resolutions approving such defective corporate act, or as of a date within 60 days after such date of adoption, as established by the board of directors, at the address of such holder as it appears or most recently appeared, as appropriate, on the records of the corporation. The notice also shall be given to the holders of record of valid stock and putative stock, whether voting or nonvoting, as of the time of the defective corporate act, other than holders whose identities or addresses cannot be determined from the records of the corporation. The notice shall contain a copy of the resolutions adopted pursuant to subsection (b) or the information specified in subsection (b)(1)(A) through (E) or subsection (b)(2)(A) through (C), as applicable, and a statement that any claim that the defective corporate act or putative stock ratified hereunder is void or voidable due to the failure of authorization, or that the district court should declare in its discretion that a ratification in accordance with this section not be effective or be effective only on certain conditions must be brought within 120 days from the later of the validation effective time or the time at which the notice required by this subsection is given.

(2) Notwithstanding the provisions of paragraph (1): (A) No such notice shall be required if notice of the ratification of the defective corporate act is to be given in accordance with subsection (d); and (B) in the case of a corporation that has a class of stock listed on a national securities exchange, the notice required by this subsection may be deemed given if disclosed in a document publicly filed by the corporation with the securities and exchange commission pursuant to section 13, 14 or 15(d) of the securities exchange act of 1934, as amended, and the rules and regulations promulgated thereunder, or the corresponding provisions of any subsequent federal securities laws, rules or regulations.

(3) If any defective corporate act has been approved by stockholders acting pursuant to K.S.A. 17-6518, and amendments thereto, the notice required by this subsection may be included in any notice required to be given pursuant to K.S.A. 17-6518(e), and amendments thereto, and, if so given, shall be sent to the stockholders entitled thereto under K.S.A. 17-6518(e), and amendments thereto, and to all holders of valid and putative stock to whom notice would be required under this subsection if the defective corporate act had been approved at a meeting other than any stockholder who approved the action by consent in lieu of a meeting pursuant to K.S.A. 17-6518, and amendments thereto, or any holder of putative stock who otherwise consented thereto in writing. Solely for purposes of subsection (d) and this subsection, notice to holders of putative stock, and notice to holders of valid stock and putative stock as of the time of the defective corporate act, shall be treated as notice to holders of valid stock for purposes of K.S.A. 17-6512, 17-6518, 17-6519, 17-6520, 17-6522 and 17-6523, and amendments thereto.

(h) As used in this section and in K.S.A. 2020 Supp. 17-6429, and amendments thereto, only, the terms:

(1) "Defective corporate act" means an overissue, an election or appointment of directors that is void or voidable due to a failure of authorization, or any act or transaction purportedly taken by or on behalf of the corporation that is, and at the time such act or transaction was purportedly taken would have been, within the power of a corporation under the provisions of article 61 of chapter 17 of the Kansas Statutes Annotated, and amendments thereto, but is void or voidable due to a failure of authorization.

(2) "Failure of authorization" means: (A) The failure to authorize or effect an act or transaction in compliance with the provisions of this code, the articles of incorporation or bylaws of the corporation, or any plan or agreement to which the

corporation is a party, if and to the extent such failure would render such act or transaction void or voidable; or (B) the failure of the board of directors or any officer of the corporation to authorize or approve any act or transaction taken by or on behalf of the corporation that would have required for its due authorization the approval of the board of directors or such officer.

(3) "Overissue" means the purported issuance of:

(A) Shares of capital stock of a class or series in excess of the number of shares of such class or series the corporation has the power to issue under K.S.A. 17-6411, and amendments thereto, at the time of such issuance; or

(B) shares of any class or series of capital stock that is not then authorized for issuance by the articles of incorporation of the corporation.

(4) "Putative stock" means the shares of any class or series of capital stock of the corporation, including shares issued upon exercise of options, rights, warrants or other securities convertible into shares of capital stock of the corporation, or interests with respect thereto that were created or issued pursuant to a defective corporate act, that:

(A) But for any failure of authorization, would constitute valid stock; or

(B) cannot be determined by the board of directors to be valid stock.

(5) "Time of the defective corporate act" means the date and time the defective corporate act was purported to have been taken.

(6) "Validation effective time" with respect to any defective corporate act ratified pursuant to this section means the latest of:

(A) The time at which the defective corporate act submitted to the stockholders for approval pursuant to subsection (c) is approved by such stockholders, or if no such vote of stockholders is required to approve the ratification of the defective corporate act, the time at which the board of directors adopts the resolutions required by subsection (b)(1) or (b)(2);

(B) where no certificate of validation is required to be filed pursuant to subsection (e), the time, if any, specified by the board of directors in the resolutions adopted pursuant to subsection (b)(1) or (b)(2), which time shall not precede the time at which such resolutions are adopted; and

(C) the time at which any certificate of validation filed pursuant to subsection (e) shall become effective in accordance with K.S.A. 2020 Supp. 17-7911, and amendments thereto.

(7) "Valid stock" means the shares of any class or series of capital stock of the corporation that have been duly authorized and validly issued in accordance with the Kansas general corporation code.

In the absence of actual fraud in the transaction, the judgment of the board of directors that shares of stock are valid stock or putative stock shall be conclusive, unless otherwise determined by the district court in a proceeding brought pursuant to K.S.A. 2020 Supp. 17-6429, and amendments thereto.

(i) Ratification under this section or validation under K.S.A. 2020 Supp. 17-6429, and amendments thereto, shall not be deemed to be the exclusive means of ratifying or validating any act or transaction taken by or on behalf of the corporation, including any defective corporate act, or any issuance of stock, including any putative stock, or of adopting or endorsing any act or transaction taken by or in the name of the corporation prior to the commencement of its existence, and the absence or failure of ratification in accordance with either this section or validation under K.S.A. 2020 Supp. 17-6429, and amendments thereto, shall not, of itself, affect the validity or effectiveness of any act or transaction or the issuance of any stock properly ratified under common law or otherwise, nor shall it create a presumption that any such act or transaction is or was a defective corporate act or that such stock is void or voidable.

(j) This section shall be part of and supplemental to article 64 of chapter 17 of the Kansas Statutes Annotated, and amendments thereto.

**History:** L. 2016, ch. 110, § 8; July 1.