SENATE BILL No. 132

AN ACT enacting the business entity transactions act; amending K.S.A. 17-7675, 17-7681, 56a-401, 56a-502, 56a-905, 56a-906, 56a-907 and 56a-908 and repealing the existing sections; also repealing K.S.A. 17-7684, 17-7685, 17-7701, 17-7702, 17-7703, 17-7704, 17-7705, 17-7706, 17-7707, 17-7708, 17-7709, 56a-901, 56a-902, 56a-903 and 56a-904.

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

New Section 1. This act may be cited as the business entity transactions act.

New Sec. 2. As used in this act:

(a) "Acquired entity" means the entity, all of one or more classes or series of interests in which are acquired in an interest exchange.

(b) "Acquiring entity" means the entity that acquires all of one or more classes or series of interests of the acquired entity in an interest exchange.

(c) "Agreement" means a plan or agreement of merger, interest exchange, conversion or domestication.

(d) "Approve" means, in the case of an entity, for its governors and interest holders to take whatever steps are necessary under its organic rules, organic law, and other law to:

(1) Propose a transaction subject to this act;

(2) adopt and approve the terms and conditions of the transaction; and

(3) conduct any required proceedings or otherwise obtain any required votes or consents of the governors or interest holders.

(e) "Conversion" means a transaction authorized by sections 23 through 28, and amendments thereto.

(f) "Converted entity" means the converting entity as it continues in existence after a conversion.

(g) "Converting entity" means the domestic entity that approves an agreement of conversion pursuant to section 25, and amendments thereto, or the foreign entity that approves a conversion pursuant to the law of its jurisdiction of organization.

(h) "Domestic entity" means an entity whose internal affairs are governed by the law of this state.

(i) "Domesticated entity" means the domesticating entity as it continues in existence after a domestication.

(j) "Domesticating entity" means the domestic entity that approves an agreement of domestication pursuant to section 31, and amendments thereto, or the foreign entity that approves a domestication pursuant to the law of its jurisdiction of organization.

(k) "Domestication" means a transaction authorized by sections 29 through 34, and amendments thereto.

(l) "Entity" means:

(1) A corporation;

(2) a general partnership, including a limited liability partnership;

(3) a limited partnership, including a limited liability limited partnership;

(4) a limited liability company;

(5) a business trust or statutory trust entity;

(6) a cooperative; or

(7) any other person that has a separate legal existence or has the power to acquire an interest in real property in its own name other than:

(A) An individual;

(B) a testamentary, inter vivos, or charitable trust, with the exception of a business trust, statutory trust entity or similar trust;

(C) an association or relationship that is not a partnership solely by reason of subsection (c) of K.S.A. 56a-202, and amendments thereto, or a similar provision of the law of any other jurisdiction;

(D) a decedent's estate; or

(E) a government, a governmental subdivision, agency, or instrumentality or a quasi-governmental instrumentality.

(m) "Filing entity" means an entity that is created by the filing of a public organic document.

(n) "Foreign entity" means an entity whose internal affairs are governed by the laws of a jurisdiction other than this state.

(o) "Governance interest" means the right under the organic law or organic rules of an entity, other than as a governor, agent, assignee or proxy, to:

(1) Receive or demand access to information concerning, or the books and records of, the entity;

(2) vote for the election of the governors of the entity; or

(3) receive notice of or vote on any or all issues involving the internal affairs of the entity.

(p) "Governor" means a person by or under whose authority the powers of an entity are exercised and under whose direction the business and affairs of the entity are managed pursuant to the organic law and organic rules of the entity.

(q) "Interest" means:

(1) A governance interest in an unincorporated entity;

(2) a transferable interest in an unincorporated entity; or

(3) a share or membership in a corporation.

(r) "Interest exchange" means a transaction authorized by sections 17 through 22, and amendments thereto.

(s) "Interest holder" means a direct holder of an interest.

(t) "Interest holder liability" means:

(1) Personal liability for a liability of an entity that is imposed on a person:

(A) Solely by reason of the status of the person as an interest holder; or

(B) by the organic rules of the entity pursuant to a provision of the organic law authorizing the organic rules to make one or more specified interest holders or categories of interest holders liable in their capacity as interest holders for all or specified liabilities of the entity; or

(2) an obligation of an interest holder under the organic rules of an entity to contribute to the entity.

(u) "Jurisdiction of organization" of an entity means the jurisdiction whose law includes the organic law of the entity.

(v) "Liability" means a debt, obligation or any other liability arising in any manner, regardless of whether it is secured or whether it is contingent.

(w) "Merger" means a transaction in which two or more merging entities are combined into a surviving entity pursuant to a filing with the secretary of state.

(x) "Merging entity" means an entity that is a party to a merger and exists immediately before the merger becomes effective.

(y) "Organic law" means the statutes, if any, other than this act, governing the internal affairs of an entity.

(z) "Organic rules" means the public organic document and private organic rules of an entity.

(aa) "Person" means an individual, corporation, estate, trust, partnership, limited liability company, business or similar trust, association, joint venture, public corporation, government, or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(bb) "Private organic rules" mean the rules, whether or not in a record, that govern the internal affairs of an entity, are binding on all of its interest holders and are not part of its public organic document, if any.

(cc) "Protected agreement" means:

(1) A record evidencing indebtedness and any related agreement in effect on the effective date of this act;

(2) an agreement that is binding on an entity on the effective date of this act;

(3) the organic rules of an entity in effect on the effective date of this act; or

(4) an agreement that is binding on any of the governors or interest holders of an entity on the effective date of this act.

(dd) "Public organic document" means the public record the filing of which creates an entity and any amendment to or restatement of that record.

(ee) "Qualified foreign entity" means a foreign entity that is authorized to transact business in this state pursuant to a filing with the secretary of state.

(ff) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(gg) "Sign" means, with present intent to authenticate or adopt a record:

(1) To execute or adopt a tangible symbol; or

(2) to attach to or logically associate with the record an electronic sound, symbol or process.

(hh) "Surviving entity" means the entity that continues in existence after or is created by a merger.

(ii) "Transferable interest" means the right under an entity's organic law to receive distributions from the entity.

(jj) "Type," with regard to an entity, means a generic form of entity:

(1) Recognized at common law; or

(2) organized under an organic law, whether or not some entities organized under that organic law are subject to provisions of that law that create different categories of the form of entity.

New Sec. 3. (a) Unless displaced by particular provisions of this act, the principles of law and equity supplement this act.

(b) This act does not authorize an act prohibited by, and does not affect the application or requirements of, law other than this act.

(c) A transaction effected under this act may not create or impair any right or obligation on the part of a person under a provision of the law of this state other than this act relating to a change in control, takeover, business combination, control-share acquisition or similar transaction involving a domestic merging, acquired, converting or domesticating corporation unless:

(1) If the corporation does not survive the transaction, the transaction satisfies any requirements of the provision; or

(2) if the corporation survives the transaction, the approval of the agreement is by a vote of the shareholders or directors which would be sufficient to create or impair the right or obligation directly under the provision.

(d) Any entity subject to special regulation pursuant to chapter 66 of the Kansas Statutes Annotated shall be subject to the special provisions and requirements applicable to such entities including K.S.A. 66-127 and 66-136, and amendments thereto. Where the provisions of this act are not inconsistent, they shall be construed as supplemental to chapter 66 of the Kansas Statutes Annotated and not in derogation or limitation thereof.

New Sec. 4. (a) A domestic or foreign entity that is required to give notice to, or obtain the approval of, a governmental agency or officer in order to be a party to a merger shall give the notice or obtain the approval in order to be a party to an interest exchange, conversion or domestication.

(b) A domestic or foreign entity subject to chapter 66 of the Kansas Statutes Annotated shall obtain approval in accordance with the special requirements applicable thereto, including K.S.A. 66-127 and 66-136, and amendments thereto, prior to effecting a transaction under this act.

(c) Property held for a charitable purpose under the law of this state by a domestic or foreign entity immediately before a transaction under this act becomes effective may not, as a result of the transaction, be diverted from the objects for which it was donated, granted, or devised unless, to the extent required by or pursuant to the law of this state concerning cypres or other law dealing with nondiversion of charitable assets, the entity obtains an appropriate order of the district court specifying the disposition of the property.

New Sec. 5. A filing under this act signed by a domestic entity becomes part of the public organic document of the entity if the entity's organic law provides that similar filings under that law become part of the public organic document of the entity.

New Sec. 6. The fact that a transaction under this act produces a certain result does not preclude the same result from being accomplished in any other manner permitted by law other than this act.

New Sec. 7. An agreement may refer to facts ascertainable outside of the agreement if the manner in which the facts will operate upon the agreement is specified in the agreement. The facts may include the occurrence of an event or a determination or action by a person, whether or not the event, determination, or action is within the control of a party to the transaction.

New Sec. 8. Except as otherwise provided in the organic law or or-

ganic rules of a domestic entity, approval of a transaction under this act by the unanimous vote or consent of its interest holders satisfies the requirements of this act for approval of the transaction.

New Sec. 9. (a) An interest holder of a domestic merging, acquired, converting or domesticating entity is entitled to appraisal rights in connection with the transaction if the interest holder would have been entitled to appraisal rights under the entity's organic law in connection with a merger in which the interest of the interest holder was changed, converted or exchanged unless:

(1) The organic law permits the organic rules to limit the availability of appraisal rights; and

(2) the organic rules provide such a limit.

(b) An interest holder of a domestic merging, acquired, converting or domesticating entity is entitled to contractual appraisal rights in connection with a transaction under this act to the extent provided:

(1) In the entity's organic rules;

(2) in the agreement; or

(3) in the case of a corporation, by action of its governors.

(c) If an interest holder is entitled to contractual appraisal rights under subsection (b) and the entity's organic law does not provide procedures for the conduct of an appraisal rights proceeding, the general corporate code applies to the extent practicable or as otherwise provided in the entity's organic rules or the agreement.

New Sec. 10. The following entities may not participate in a transaction under this act:

(a) Entities regulated under chapter 40 of the Kansas Statutes Annotated;

(b) banks and trust companies organized under chapter 9 of the Kansas Statutes Annotated;

(c) credit unions organized under K.S.A. 17-2201 et seq., and amendments thereto; and

(d) professional corporations formed under the Kansas professional corporation law or limited liability companies organized under the Kansas revised limited liability company act to render a professional service, as defined at K.S.A. 17-2707, and amendments thereto.

New Sec. 11. (a) Except as otherwise provided in this section, by complying with sections 11 through 16, and amendments thereto:

(1) One or more domestic entities may merge with one or more domestic or foreign entities into a domestic or foreign surviving entity; and

(2) two or more foreign entities may merge into a domestic entity.

(b) Except as otherwise provided in this section, by complying with the provisions of sections 11 through 16, and amendments thereto, applicable to foreign entities a foreign entity may be a party to a merger under sections 11 through 16, and amendments thereto, or may be the surviving entity in such a merger if the merger is authorized by the law of the foreign entity's jurisdiction of organization.

(c) Sections 11 through 16, and amendments thereto, do not apply to the following mergers:

(1) A merger between any two or more domestic corporations or one or more domestic corporations and one or more foreign corporations pursuant to K.S.A. 17-6701 et seq., and amendments thereto;

(2) a merger between any two or more domestic limited partnerships or one or more domestic limited partnerships and one or more foreign limited partnerships pursuant to K.S.A. 56-1a609, and amendments thereto;

(3) a merger between any two or more partnerships pursuant to K.S.A. 56a-905, and amendments thereto; or

(4) a merger between any two or more domestic limited liability companies or one or more domestic limited liability companies and one or more foreign limited liability companies pursuant to K.S.A. 17-7681, and amendments thereto.

New Sec. 12. (a) A domestic entity may become a party to a merger under sections 11 through 16, and amendments thereto, by approving an agreement of merger. The agreement shall be in a record and contain:

(1) As to each merging entity, its name, jurisdiction of organization and type;

(2) if the surviving entity is to be created in the merger, a statement to that effect and its name, jurisdiction of organization and type;

(3) the manner of converting the interests in each party to the merger into interests, securities, obligations, rights to acquire interests or securities, cash or other property or any combination of the foregoing;

(4) if the surviving entity exists before the merger, any proposed amendments to its public organic document or to its private organic rules that are, or are proposed to be, in a record;

(5) if the surviving entity is to be created in the merger, its proposed public organic document, if any, and the full text of its private organic rules that are proposed to be in a record;

(6) the other terms and conditions of the merger; and

(7) any other provision required by the law of a merging entity's jurisdiction of organization or the organic rules of a merging entity.

(b) An agreement of merger shall be signed on behalf of each merging entity.

(c) An agreement of merger may contain any other provision not prohibited by law.

New Sec. 13. (a) An agreement of merger is not effective unless it has been approved:

(1) By a domestic merging entity:

(A) In accordance with the requirements, if any, in its organic law and organic rules for approval of:

(i) In the case of an entity that is not a corporation, a merger; or

(ii) in the case of a corporation, a merger requiring approval by a vote of the interest holders of the corporation; or

(B) if neither its organic law nor organic rules provide for approval of a merger described in subparagraph (A), by all of the interest holders of the entity entitled to vote on or consent to any matter; and

(2) in a record, by each interest holder of a domestic merging entity that will have interest holder liability for liabilities that arise after the merger becomes effective, unless, in the case of an entity that is not a corporation:

(A) The organic rules of the entity provide in a record for the approval of a merger in which some or all of its interest holders become subject to interest holder liability by the vote or consent of fewer than all of the interest holders; and

(B) the interest holder voted for or consented in a record to that provision of the organic rules or became an interest holder after the adoption of that provision.

(b) A merger involving a foreign merging entity is not effective unless it is approved by the foreign entity in accordance with the law of the foreign entity's jurisdiction of organization.

New Sec. 14. (a) An agreement of merger of a domestic merging entity may be amended:

(1) In the same manner as the agreement was approved, if the agreement does not provide for the manner in which it may be amended; or

(2) by the governors or interest holders of the entity in the manner provided in the agreement, but an interest holder that was entitled to vote on or consent to approval of the merger is entitled to vote on or consent to any amendment of the agreement that will change:

(A) The amount or kind of interests, securities, obligations, rights to acquire interests or securities, cash, or other property, or any combination of the foregoing, to be received by the interest holders of any party to the agreement;

(B) the public organic document or private organic rules of the surviving entity that will be in effect immediately after the merger becomes effective, except for changes that do not require approval of the interest holders of the surviving entity under its organic law or organic rules; or

(C) any other terms or conditions of the agreement, if the change would adversely affect the interest holder in any material respect.

(b) After an agreement of merger has been approved by a domestic merging entity and before a certificate of merger becomes effective, the agreement may be terminated:

(1) As provided in the agreement; or

(2) unless prohibited by the agreement, in the same manner as the agreement was approved.

(c) If an agreement of merger is terminated after a certificate of merger has been filed with the secretary of state and before the filing becomes effective, a certificate of termination, signed on behalf of a merging entity, shall be filed with the secretary of state before the time the certificate of merger becomes effective. The certificate of termination takes effect upon filing, and the merger is terminated and does not become effective. The certificate of termination shall contain:

(1) The name of each merging or surviving entity that is a domestic entity or a qualified foreign entity;

(2) the date on which the certificate of merger was filed; and

(3) a statement that the merger has been terminated in accordance with this section.

New Sec. 15. (a) A certificate of merger shall be signed on behalf of the surviving entity and filed with the secretary of state.

(b) A certificate of merger shall contain:

(1) The name, jurisdiction of organization and type of each merging entity that is not the surviving entity;

(2) the name, jurisdiction of organization and type of the surviving entity;

(3) if the certificate of merger is not to be effective upon filing, the later date and time on which it will become effective, which may not be more than 90 days after the date of filing;

(4) a statement that the merger was approved by each domestic merging entity, if any, in accordance with sections 11 through 16, and amendments thereto, and by each foreign merging entity, if any, in accordance with the law of its jurisdiction of organization;

(5) if the surviving entity exists before the merger and is a domestic filing entity, any amendment to its public organic document approved as part of the agreement of merger;

(6) if the surviving entity is created by the merger and is a domestic filing entity, its public organic document, as an attachment;

(7) if the surviving entity is created by the merger and is a domestic limited liability partnership, its statement of qualification, as an attachment; and

(8) if the surviving entity is a foreign entity that is not a qualified foreign entity, a mailing address to which the secretary of state may send any process served on the secretary of state pursuant to subsection (e) of section 16, and amendments thereto.

(c) In addition to the requirements of subsection (b), a certificate of merger may contain any other provision not prohibited by law.

(d) If the surviving entity is a domestic entity, its name and any attached public organic document shall satisfy the requirements of the law of this state, except that it does not need to be signed and may omit any provision that is not required to be included in a restatement of the public organic document. If the surviving entity is a qualified foreign entity, its name shall satisfy the requirements of the law of this state.

(e) An agreement of merger that is signed on behalf of all of the merging entities and meets all of the requirements of subsection (b) may be filed with the secretary of state instead of a certificate of merger and upon filing has the same effect. If an agreement of merger is filed as provided in this subsection, references in this act to a certificate of merger refer to the agreement of merger filed under this subsection.

(f) A certificate of merger becomes effective upon the date and time of filing or the later date and time specified in the certificate of merger.

New Sec. 16. (a) When a merger becomes effective:

(1) The surviving entity continues or comes into existence;

(2) each merging entity that is not the surviving entity ceases to exist;

(3) all property of each merging entity vests in the surviving entity without assignment, reversion or impairment;

(4) all liabilities of each merging entity are liabilities of the surviving entity;

(5) except as otherwise provided by law other than this act or the agreement of merger, all of the rights, privileges, immunities, powers and purposes of each merging entity vest in the surviving entity;

(6) if the surviving entity exists before the merger:

(A) All of its property continues to be vested in it without reversion or impairment;

(B) it remains subject to all of its liabilities; and

(C) all of its rights, privileges, immunities, powers and purposes continue to be vested in it;

(7) the name of the surviving entity may be substituted for the name of any merging entity that is a party to any pending action or proceeding;

(8) if the surviving entity exists before the merger:

(A) its public organic document, if any, is amended as provided in the certificate of merger and is binding on its interest holders; and

(B) its private organic rules that are to be in a record, if any, are amended to the extent provided in the agreement of merger and are binding on and enforceable by:

(i) Its interest holders; and

(ii) in the case of a surviving entity that is not a corporation, any other person that is a party to an agreement that is part of the surviving entity's private organic rules;

(9) if the surviving entity is created by the merger:

(A) Its public organic document, if any, is effective and is binding on its interest holders; and

(B) its private organic rules are effective and are binding on and enforceable by:

(i) Its interest holders; and

(ii) in the case of a surviving entity that is not a corporation, any other person that was a party to an agreement that was part of the organic rules of a merging entity if that person has agreed to be a party to an agreement that is part of the surviving entity's private organic rules; and

(10) the interests in each merging entity that are to be converted in the merger are converted and the interest holders of those interests are entitled only to the rights provided to them under the agreement of merger and to any appraisal rights they have under section 9, and amendments thereto, and the merging entity's organic law.

(b) Except as otherwise provided in the organic law or organic rules of a merging entity, the merger does not give rise to any rights that an interest holder, governor or third party would otherwise have upon a dissolution, liquidation or winding-up of the merging entity.

(c) When a merger becomes effective, a person that did not have interest holder liability with respect to any of the merging entities and that becomes subject to interest holder liability with respect to a domestic entity as a result of a merger has interest holder liability only to the extent provided by the organic law of the entity and only for those liabilities that arise after the merger becomes effective.

(d) When a merger becomes effective, the interest holder liability of a person that ceases to hold an interest in a domestic merging entity with respect to which the person had interest holder liability is as follows:

(1) the merger does not discharge any interest holder liability under the organic law of the domestic merging entity to the extent the interest holder liability arose before the merger became effective;

(2) the person does not have interest holder liability under the organic law of the domestic merging entity for any liability that arises after the merger becomes effective;

(3) the organic law of the domestic merging entity continues to apply to the release, collection or discharge of any interest holder liability preserved under paragraph (1) as if the merger had not occurred and the surviving entity were the domestic merging entity; and

(4) the person has whatever rights of contribution from any other person as are provided by the organic law or organic rules of the domestic merging entity with respect to any interest holder liability preserved under paragraph (1) as if the merger had not occurred.

(e) When a merger becomes effective, a foreign entity that is the surviving entity:

(1) May be served with process in this state for the collection and enforcement of any liabilities of a domestic merging entity; and

(2) irrevocably appoints the secretary of state as its agent to accept service of process in any such suit or other proceeding. Service of process shall be made on the foreign entity pursuant to K.S.A. 60-304, and amendments thereto.

(f) When a merger becomes effective, the certificate of authority or other foreign qualification of any foreign merging entity that is not the surviving entity is canceled.

New Sec. 17. (a) Except as otherwise provided in this section, by complying with sections 17 through 22, and amendments thereto:

(1) A domestic entity may acquire all of one or more classes or series of interests of another domestic or foreign entity in exchange for interests, securities, obligations, rights to acquire interests or securities, cash, or other property, or any combination of the foregoing; or

(2) all of one or more classes or series of interests of a domestic entity may be acquired by another domestic or foreign entity in exchange for interests, securities, obligations, rights to acquire interests or securities, cash, or other property, or any combination of the foregoing.

(b) Except as otherwise provided in this section, by complying with the provisions of sections 17 through 22, and amendments thereto, applicable to foreign entities a foreign entity may be the acquiring or acquired entity in an interest exchange under sections 17 through 22, and amendments thereto, if the interest exchange is authorized by the law of the foreign entity's jurisdiction of organization.

(c) If a protected agreement contains a provision that applies to a merger of a domestic entity but does not refer to an interest exchange, the provision applies to an interest exchange in which the domestic entity is the acquired entity as if the interest exchange were a merger until the provision is amended after the effective date of this act.

New Sec. 18. (a) A domestic entity may be the acquired entity in an interest exchange under sections 17 through 22, and amendments thereto, by approving an agreement of interest exchange. The agreement shall be in a record and contain:

(1) The name and type of the acquired entity;

(2) the name, jurisdiction of organization and type of the acquiring entity;

(3) the manner of converting the interests in the acquired entity into interests, securities, obligations, rights to acquire interests or securities, cash, or other property or any combination of the foregoing;

(4) any proposed amendments to the public organic document or private organic rules that are, or are proposed to be, in a record of the acquired entity;

(5) the other terms and conditions of the interest exchange; and

(6) any other provision required by the law of this state or the organic rules of the acquired entity.

(b) An agreement of interest exchange may contain any other provision not prohibited by law.

New Sec. 19. (a) An agreement of interest exchange is not effective unless it has been approved:

(1) By a domestic acquired entity:

(A) In accordance with the requirements, if any, in its organic law and organic rules for approval of an interest exchange;

(B) except as otherwise provided in subsection (d), if neither its organic law nor organic rules provide for approval of an interest exchange, in accordance with the requirements, if any, in its organic law and organic rules for approval of:

(i) In the case of an entity that is not a corporation, a merger, as if the interest exchange were a merger; or

(ii) in the case of a corporation, a merger requiring approval by a vote of the interest holders of the corporation, as if the interest exchange were that type of merger; or

(C) if neither its organic law nor organic rules provide for approval of an interest exchange or a merger described in subparagraph (B), by all of the interest holders of the entity entitled to vote on or consent to any matter; and

(2) in a record, by each interest holder of a domestic acquired entity that will have interest holder liability for liabilities that arise after the interest exchange becomes effective, unless, in the case of an entity that is not a corporation:

(A) The organic rules of the entity provide in a record for the approval of an interest exchange or a merger in which some or all of its interest holders become subject to interest holder liability by the vote or consent of fewer than all of the interest holders; and

(B) the interest holder voted for or consented in a record to that

provision of the organic rules or became an interest holder after the adoption of that provision.

(b) An interest exchange involving a foreign acquired entity is not effective unless it is approved by the foreign entity in accordance with the law of the foreign entity's jurisdiction of organization.

(c) Except as otherwise provided in its organic law or organic rules, the interest holders of the acquiring entity are not required to approve the interest exchange.

(d) A provision of the organic law of a domestic acquired entity that would permit a merger between the acquired entity and the acquiring entity to be approved without the vote or consent of the interest holders of the acquired entity because of the percentage of interests in the acquired entity held by the acquiring entity does not apply to approval of an interest exchange under subsection (a)(1)(B).

New Sec. 20. (a) An agreement of interest exchange of a domestic acquired entity may be amended:

(1) In the same manner as the agreement was approved, if the agreement does not provide for the manner in which it may be amended; or

(2) by the governors or interest holders of the entity in the manner provided in the agreement, but an interest holder that was entitled to vote on or consent to approval of the interest exchange is entitled to vote on or consent to any amendment of the agreement that will change:

(A) The amount or kind of interests, securities, obligations, rights to acquire interests or securities, cash, or other property, or any combination of the foregoing, to be received by any of the interest holders of the acquired entity under the agreement;

(B) the public organic document or private organic rules of the acquired entity that will be in effect immediately after the interest exchange becomes effective, except for changes that do not require approval of the interest holders of the acquired entity under its organic law or organic rules; or

(C) any other terms or conditions of the agreement, if the change would adversely affect the interest holder in any material respect.

(b) After an agreement of interest exchange has been approved by a domestic acquired entity and before a certificate of interest exchange becomes effective, the agreement may be terminated:

(1) As provided in the agreement; or

(2) unless prohibited by the agreement, in the same manner as the agreement was approved.

(c) If an agreement of interest exchange is terminated after a certificate of interest exchange has been filed with the secretary of state and before the filing becomes effective, a certificate of termination, signed on behalf of the acquired entity, shall be filed with the secretary of state before the time the certificate of interest exchange becomes effective. The certificate of termination takes effect upon filing and the interest exchange is terminated and does not become effective. The certificate of termination must contain:

(1) The name of the acquired entity;

(2) the date on which the certificate of interest exchange was filed; and

(3) a statement that the interest exchange has been terminated in accordance with this section.

New Sec. 21. (a) A certificate of interest exchange shall be signed on behalf of a domestic acquired entity and filed with the secretary of state.

(b) A certificate of interest exchange must contain:

(1) The name and type of the acquired entity;

(2) the name, jurisdiction of organization and type of the acquiring entity;

(3) if the certificate of interest exchange is not to be effective upon filing, the later date and time on which it will become effective, which may not be more than 90 days after the date of filing;

(4) a statement that the agreement of interest exchange was approved by the acquired entity in accordance with sections 17 through 22, and amendments thereto; and

(5) any amendments to the acquired entity's public organic document approved as part of the agreement of interest exchange.

(c) In addition to the requirements of subsection (b), a certificate of interest exchange may contain any other provision not prohibited by law.

(d) An agreement of interest exchange that is signed on behalf of a domestic acquired entity and meets all of the requirements of subsection (b) may be filed with the secretary of state instead of a certificate of interest exchange and upon filing has the same effect. If an agreement of interest exchange is filed as provided in this subsection, references in this act to a certificate of interest exchange refer to the agreement of interest exchange filed under this subsection.

(e) A certificate of interest exchange becomes effective upon the date and time of filing or the later date and time specified in the certificate of interest exchange.

New Sec. 22. (a) When an interest exchange becomes effective:

(1) The interests in the acquired entity that are the subject of the interest exchange cease to exist or are converted or exchanged and the interest holders of those interests are entitled only to the rights provided to them under the agreement of interest exchange and to any appraisal rights they have under section 9, and amendments thereto, and the acquired entity's organic law;

(2) the acquiring entity becomes the interest holder of the interests in the acquired entity stated in the agreement of interest exchange to be acquired by the acquiring entity;

(3) the public organic document, if any, of the acquired entity is amended as provided in the certificate of interest exchange and is binding on its interest holders; and

(4) the private organic rules of the acquired entity that are to be in a record, if any, are amended to the extent provided in the agreement of interest exchange and are binding on and enforceable by:

(A) Its interest holders; and

(B) in the case of an acquired entity that is not a corporation, any other person that is a party to an agreement that is part of the acquired entity's private organic rules.

(b) Except as otherwise provided in the organic law or organic rules of the acquired entity, the interest exchange does not give rise to any rights that an interest holder, governor or third party would otherwise have upon a dissolution, liquidation or winding-up of the acquired entity.

(c) When an interest exchange becomes effective, a person that did not have interest holder liability with respect to the acquired entity and that becomes subject to interest holder liability with respect to a domestic entity as a result of the interest exchange has interest holder liability only to the extent provided by the organic law of the entity and only for those liabilities that arise after the interest exchange becomes effective.

(d) When an interest exchange becomes effective, the interest holder liability of a person that ceases to hold an interest in a domestic acquired entity with respect to which the person had interest holder liability is as follows:

(1) The interest exchange does not discharge any interest holder liability under the organic law of the domestic acquired entity to the extent the interest holder liability arose before the interest exchange became effective;

(2) the person does not have interest holder liability under the organic law of the domestic acquired entity for any liability that arises after the interest exchange becomes effective;

(3) the organic law of the domestic acquired entity continues to apply to the release, collection or discharge of any interest holder liability preserved under paragraph (1) as if the interest exchange had not occurred; and

(4) the person has whatever rights of contribution from any other person as are provided by the organic law or organic rules of the domestic acquired entity with respect to any interest holder liability preserved under paragraph (1) as if the interest exchange had not occurred.

New Sec. 23. (a) Except as otherwise provided in this section, by complying with sections 23 through 28, and amendments thereto, a domestic entity may become:

(1) A domestic entity of a different type; or

(2) a foreign entity of a different type, if the conversion is authorized by the law of the foreign jurisdiction.

(b) Except as otherwise provided in this section, by complying with the provisions of sections 23 through 28, and amendments thereto, applicable to foreign entities a foreign entity may become a domestic entity of a different type if the conversion is authorized by the law of the foreign entity's jurisdiction of organization.

(c) If a protected agreement contains a provision that applies to a merger of a domestic entity but does not refer to a conversion, the provision applies to a conversion of the entity as if the conversion were a merger until the provision is amended after the effective date of this act.

New Sec. 24. (a) A domestic entity may convert to a different type of entity under sections 23 through 28, and amendments thereto, by approving an agreement of conversion. The agreement shall be in a record and contain:

(1) The name and type of the converting entity;

(2) the name, jurisdiction of organization and type of the converted entity;

(3) the manner of converting the interests in the converting entity into interests, securities, obligations, rights to acquire interests or securities, cash, or other property or any combination of the foregoing;

(4) the proposed public organic document of the converted entity if it will be a filing entity;

(5) the full text of the private organic rules of the converted entity that are proposed to be in a record;

(6) the other terms and conditions of the conversion; and

(7) any other provision required by the law of this state or the organic rules of the converting entity.

(b) An agreement of conversion may contain any other provision not prohibited by law.

New Sec. 25. (a) An agreement of conversion is not effective unless it has been approved:

(1) By a domestic converting entity:

(A) In accordance with the requirements, if any, in its organic rules for approval of a conversion;

(B) if its organic rules do not provide for approval of a conversion, in accordance with the requirements, if any, in its organic law and organic rules for approval of:

(i) In the case of an entity that is not a corporation, a merger, as if the conversion were a merger; or

(ii) in the case of a corporation, a merger requiring approval by a vote of the interest holders of the corporation, as if the conversion were that type of merger; or

(C) if neither its organic law nor organic rules provide for approval of a conversion or a merger described in subparagraph (B), by all of the interest holders of the entity entitled to vote on or consent to any matter; and

(2) in a record, by each interest holder of a domestic converting entity that will have interest holder liability for liabilities that arise after the conversion becomes effective, unless, in the case of an entity that is not a corporation:

(A) The organic rules of the entity provide in a record for the approval of a conversion or a merger in which some or all of its interest holders become subject to interest holder liability by the vote or consent of fewer than all of the interest holders; and

(B) the interest holder voted for or consented in a record to that provision of the organic rules or became an interest holder after the adoption of that provision.

(b) A conversion of a foreign converting entity is not effective unless it is approved by the foreign entity in accordance with the law of the foreign entity's jurisdiction of organization.

New Sec. 26. (a) An agreement of conversion of a domestic converting entity may be amended:

(1) In the same manner as the agreement was approved, if the agreement does not provide for the manner in which it may be amended; or

(2) by the governors or interest holders of the entity in the manner provided in the agreement, but an interest holder that was entitled to vote on or consent to approval of the conversion is entitled to vote on or consent to any amendment of the agreement that will change:

(A) The amount or kind of interests, securities, obligations, rights to acquire interests or securities, cash or other property, or any combination of the foregoing, to be received by any of the interest holders of the converting entity under the agreement;

(B) the public organic document or private organic rules of the converted entity that will be in effect immediately after the conversion becomes effective, except for changes that do not require approval of the interest holders of the converted entity under its organic law or organic rules; or

(C) any other terms or conditions of the agreement, if the change would adversely affect the interest holder in any material respect.

(b) After an agreement of conversion has been approved by a domestic converting entity and before a certificate of conversion becomes effective, the agreement may be terminated:

(1) As provided in the agreement; or

(2) unless prohibited by the agreement, in the same manner as the agreement was approved.

(c) If an agreement of conversion is terminated after a certificate of conversion has been filed with the secretary of state and before the filing becomes effective, a certificate of termination, signed on behalf of the entity, shall be filed with the secretary of state before the time the certificate of conversion becomes effective. The certificate of termination takes effect upon filing and the conversion is terminated and does not become effective. The certificate of termination shall contain:

(1) The name of the converting entity;

(2) the date on which the certificate of conversion was filed; and

(3) a statement that the conversion has been terminated in accordance with this section.

New Sec. 27. (a) A certificate of conversion shall be signed on behalf of the converting entity and filed with the secretary of state.

(b) A certificate of conversion shall contain:

(1) The name, jurisdiction of organization and type of the converting entity;

(2) the name, jurisdiction of organization and type of the converted entity;

(3) if the certificate of conversion is not to be effective upon filing, the later date and time on which it will become effective, which may not be more than 90 days after the date of filing;

(4) if the converting entity is a domestic entity, a statement that the agreement of conversion was approved in accordance with sections 23 through 28, and amendments thereto, or, if the converting entity is a foreign entity, a statement that the conversion was approved by the foreign converting entity in accordance with the law of its jurisdiction of organization;

(5) if the converted entity is a domestic filing entity, the text of its public organic document, as an attachment;

(6) if the converted entity is a domestic limited liability partnership, the text of its statement of qualification, as an attachment; and

(7) if the converted entity is a foreign entity, a mailing address to which the secretary of state may send any process served on the secretary of state pursuant to subsection (e) of section 28, and amendments thereto.

(c) In addition to the requirements of subsection (b), a certificate of conversion may contain any other provision not prohibited by law.

(d) If the converted entity is a domestic entity, its name and public organic document, if any, must satisfy the requirements of the law of this state, except that it does not need to be signed and may omit any provision that is not required to be included in a restatement of the public organic document.

(e) An agreement of conversion that is signed on behalf of a domestic converting entity and meets all of the requirements of subsection (b) may be filed with the secretary of state instead of a certificate of conversion and upon filing has the same effect. If an agreement of conversion is filed as provided in this subsection, references in this act to a certificate of conversion refer to the agreement of conversion filed under this subsection.

(f) A certificate of conversion becomes effective upon the date and

time of filing or the later date and time specified in the certificate of conversion.

New Sec. 28. (a) When a conversion becomes effective:

(1) The converted entity is:

(A) Organized under and subject to the organic law of the converted entity; and

(B) the same entity without interruption as the converting entity;

(2) all property of the converting entity continues to be vested in the converted entity without assignment, reversion or impairment;

(3) all liabilities of the converting entity continue as liabilities of the converted entity;

(4) except as provided by law other than this act or the agreement of conversion, all of the rights, privileges, immunities, powers and purposes of the converting entity remain in the converted entity;

(5) the name of the converted entity may be substituted for the name of the converting entity in any pending action or proceeding;

(6) if a converted entity is a filing entity, its public organic document is effective and is binding on its interest holders;

(7) if the converted entity is a limited liability partnership, its statement of qualification is effective simultaneously;

(8) the private organic rules of the converted entity that are to be in a record, if any, approved as part of the agreement of conversion are effective and are binding on and enforceable by:

(A) Its interest holders; and

(B) in the case of a converted entity that is not a corporation, any other person that is a party to an agreement that is part of the entity's private organic rules; and

(9) the interests in the converting entity are converted and the interest holders of the converting entity are entitled only to the rights provided to them under the agreement of conversion and to any appraisal rights they have under section 9, and amendments thereto, and the converting entity's organic law.

(b) Except as otherwise provided in the organic law or organic rules of the converting entity, the conversion does not give rise to any rights that an interest holder, governor or third party would otherwise have upon a dissolution, liquidation or winding-up of the converting entity.

(c) When a conversion becomes effective, a person that did not have interest holder liability with respect to the converting entity and that becomes subject to interest holder liability with respect to a domestic entity as a result of a conversion has interest holder liability only to the extent provided by the organic law of the entity and only for those liabilities that arise after the conversion becomes effective.

(d) When a conversion becomes effective:

(1) The conversion does not discharge any interest holder liability under the organic law of a domestic converting entity to the extent the interest holder liability arose before the conversion became effective;

(2) a person does not have interest holder liability under the organic law of a domestic converting entity for any liability that arises after the conversion becomes effective;

(3) the organic law of a domestic converting entity continues to apply to the release, collection or discharge of any interest holder liability preserved under paragraph (1) as if the conversion had not occurred and the surviving converted entity were the domestic converting entity; and

(4) a person has whatever rights of contribution from any other person as are provided by the organic law or organic rules of the domestic converting entity with respect to any interest holder liability preserved under paragraph (1) as if the conversion had not occurred.

(e) When a conversion becomes effective, a foreign entity that is the converted entity:

(1) May be served with process in this state for the collection and enforcement of any of its liabilities; and

(2) irrevocably appoints the secretary of state as its agent to accept service of process in any such suit or other proceeding. Service of process shall be made on the foreign entity pursuant to K.S.A. 60-304, and amendments thereto.

(f) If the converting entity is a qualified foreign entity, the certificate

of authority or other foreign qualification of the converting entity is canceled when the conversion becomes effective.

(g) A conversion does not require the entity to wind up its affairs and does not constitute or cause the dissolution of the entity.

New Sec. 29. (a) Except as otherwise provided in this section, by complying with sections 29 through 34, and amendments thereto, a domestic entity may become a domestic entity of the same type in a foreign jurisdiction if the domestication is authorized by the law of the foreign jurisdiction.

(b) Except as otherwise provided in this section, by complying with the provisions of sections 29 through 34, and amendments thereto, applicable to foreign entities a foreign entity may become a domestic entity of the same type in this state if the domestication is authorized by the law of the foreign entity's jurisdiction of organization.

(c) When the term domestic entity is used in sections 29 through 34, and amendments thereto, with reference to a foreign jurisdiction, it means an entity whose internal affairs are governed by the law of the foreign jurisdiction.

(d) If a protected agreement contains a provision that applies to a merger of a domestic entity but does not refer to a domestication, the provision applies to a domestication of the entity as if the domestication were a merger until the provision is amended after the effective date of this act.

New Sec. 30. (a) A domestic entity may become a foreign entity in a domestication by approving an agreement of domestication. The agreement shall be in a record and contain:

(1) The name and type of the domesticating entity;

(2) the name and jurisdiction of organization of the domesticated entity;

(3) the manner of converting the interests in the domesticating entity into interests, securities, obligations, rights to acquire interests or securities, cash or other property or any combination of the foregoing;

(4) the proposed public organic document of the domesticated entity if it is a filing entity;

(5) the full text of the private organic rules of the domesticated entity that are proposed to be in a record;

(6) the other terms and conditions of the domestication; and

(7) any other provision required by the law of this state or the organic rules of the domesticating entity.

(b) An agreement of domestication may contain any other provision not prohibited by law.

New Sec. 31. (a) An agreement of domestication is not effective unless it has been approved:

(1) By a domestic domesticating entity:

(A) In accordance with the requirements, if any, in its organic rules for approval of a domestication;

(B) if its organic rules do not provide for approval of a domestication, in accordance with the requirements, if any, in its organic law and organic rules for approval of:

(i) In the case of an entity that is not a corporation, a merger, as if the domestication were a merger; or

(ii) in the case of a corporation, a merger requiring approval by a vote of the interest holders of the corporation, as if the domestication were that type of merger; or

(C) if neither its organic law nor organic rules provide for approval of a domestication or a merger described in subparagraph (B), by all of the interest holders of the entity entitled to vote on or consent to any matter; and

(2) in a record, by each interest holder of a domestic domesticating entity that will have interest holder liability for liabilities that arise after the domestication becomes effective, unless, in the case of an entity that is not a corporation:

(A) The organic rules of the entity in a record provide for the approval of a domestication or a merger in which some or all of its interest holders become subject to interest holder liability by the vote or consent of fewer than all of the interest holders; and

(B) the interest holder voted for or consented in a record to that

provision of the organic rules or became an interest holder after the adoption of that provision.

(b) A domestication of a foreign domesticating entity is not effective unless it is approved in accordance with the law of the foreign entity's jurisdiction of organization.

New Sec. 32. (a) An agreement of domestication of a domestic domesticating entity may be amended:

(1) In the same manner as the agreement was approved, if the agreement does not provide for the manner in which it may be amended; or

(2) by the governors or interest holders of the entity in the manner provided in the agreement, but an interest holder that was entitled to vote on or consent to approval of the domestication is entitled to vote on or consent to any amendment of the agreement that will change:

(A) The amount or kind of interests, securities, obligations, rights to acquire interests or securities, cash or other property, or any combination of the foregoing, to be received by any of the interest holders of the domesticating entity under the agreement;

(B) the public organic document or private organic rules of the domesticated entity that will be in effect immediately after the domestication becomes effective, except for changes that do not require approval of the interest holders of the domesticated entity under its organic law or organic rules; or

(C) any other terms or conditions of the agreement, if the change would adversely affect the interest holder in any material respect.

(b) After an agreement of domestication has been approved by a domestic domesticating entity and before a certificate of domestication becomes effective, the agreement may be terminated:

(1) As provided in the agreement; or

(2) unless prohibited by the agreement, in the same manner as the agreement was approved.

(c) If an agreement of domestication is terminated after a certificate of domestication has been filed with the secretary of state and before the filing becomes effective, a certificate of termination, signed on behalf of the entity, shall be filed with the secretary of state before the time the certificate of domestication becomes effective. The certificate of termination takes effect upon filing and the domestication is terminated and does not become effective. The certificate of termination shall contain:

(1) The name of the domesticating entity;

(2) the date on which the certificate of domestication was filed; and

(3) a statement that the domestication has been terminated in accordance with this section.

New Sec. 33. (a) A certificate of domestication shall be signed on behalf of the domesticating entity and filed with the secretary of state.

(b) A certificate of domestication shall contain:

(1) The name, jurisdiction of organization and type of the domesticating entity;

(2) the name and jurisdiction of organization of the domesticated entity;

(3) if the certificate of domestication is not to be effective upon filing, the later date and time on which it will become effective, which may not be more than 90 days after the date of filing;

(4) if the domesticating entity is a domestic entity, a statement that the agreement of domestication was approved in accordance with sections 29 through 34, and amendments thereto, or, if the domesticating entity is a foreign entity, a statement that the domestication was approved in accordance with the law of its jurisdiction of organization;

(5) if the domesticated entity is a domestic filing entity, its public organic document, as an attachment;

(6) if the domesticated entity is a domestic limited liability partnership, its statement of qualification, as an attachment; and

(7) if the domesticated entity is a foreign entity, a mailing address to which the secretary of state may send any process served on the secretary of state pursuant to subsection (e) of section 34, and amendments thereto.

(c) In addition to the requirements of subsection (b), a certificate of domestication may contain any other provision not prohibited by law.

(d) If the domesticated entity is a domestic entity, its name and public organic document, if any, must satisfy the requirements of the law of this

state, except that it does not need to be signed and may omit any provision that is not required to be included in a restatement of the public organic document.

(e) An agreement of domestication that is signed on behalf of a domesticating domestic entity and meets all of the requirements of subsection (b) may be filed with the secretary of state instead of a certificate of domestication and upon filing has the same effect. If an agreement of domestication is filed as provided in this subsection, references in this act to a certificate of domestication refer to the agreement of domestication filed under this subsection.

(f) A certificate of domestication becomes effective upon the date and time of filing or the later date and time specified in the certificate of domestication.

New Sec. 34. (a) When a domestication becomes effective:

(1) The domesticated entity is:

(A) Organized under and subject to the organic law of the domesticated entity; and

(B) the same entity without interruption as the domesticating entity;

(2) all property of the domesticating entity continues to be vested in the domesticated entity without assignment, reversion or impairment;

(3) all liabilities of the domesticating entity continue as liabilities of the domesticated entity;

(4) except as provided by law other than this act or the agreement of domestication, all of the rights, privileges, immunities, powers and purposes of the domesticating entity remain in the domesticated entity;

(5) the name of the domesticated entity may be substituted for the name of the domesticating entity in any pending action or proceeding;

(6) if the domesticated entity is a filing entity, its public organic document is effective and is binding on its interest holders;

(7) if the domesticated entity is a limited liability partnership, its statement of qualification is effective simultaneously;

(8) the private organic rules of the domesticated entity that are to be in a record, if any, approved as part of the agreement of domestication are effective and are binding on and enforceable by:

(A) Its interest holders; and

(B) in the case of a domesticated entity that is not a corporation, any other person that is a party to an agreement that is part of the domesticated entity's private organic rules; and

(9) the interests in the domesticating entity are converted to the extent and as approved in connection with the domestication and the interest holders of the domesticating entity are entitled only to the rights provided to them under the agreement of domestication and to any appraisal rights they have under section 9, and amendments thereto, and the domesticating entity's organic law.

(b) Except as otherwise provided in the organic law or organic rules of the domesticating entity, the domestication does not give rise to any rights that an interest holder, governor or third party would otherwise have upon a dissolution, liquidation or winding-up of the domesticating entity.

(c) When a domestication becomes effective, a person that did not have interest holder liability with respect to the domesticating entity and that becomes subject to interest holder liability with respect to a domestic entity as a result of the domestication has interest holder liability only to the extent provided by the organic law of the entity and only for those liabilities that arise after the domestication becomes effective.

(d) When a domestication becomes effective:

(1) The domestication does not discharge any interest holder liability under the organic law of a domesticating domestic entity to the extent the interest holder liability arose before the domestication became effective;

(2) a person does not have interest holder liability under the organic law of a domestic domesticating entity for any liability that arises after the domestication becomes effective;

(3) the organic law of a domestic domesticating entity continues to apply to the release, collection or discharge of any interest holder liability preserved under paragraph (1) as if the domestication had not occurred and the domesticated entity were the domestic domesticating entity; and

(4) a person has whatever rights of contribution from any other person as are provided by the organic law or organic rules of a domestic domesticating entity with respect to any interest holder liability preserved under paragraph (1) as if the domestication had not occurred.

(e) When a domestication becomes effective, a domesticated entity that is a foreign entity:

(1) May be served with process in this state for the collection and enforcement of any of its liabilities; and

(2) irrevocably appoints the secretary of state as its agent to accept service of process in any such suit or other proceeding. Service of process shall be made on the foreign entity pursuant to K.S.A. 60-304, and amendments thereto.

(f) If the domesticating entity is a qualified foreign entity, the certificate of authority or other foreign qualification of the domesticating entity is canceled when the domestication becomes effective.

(g) A domestication does not require the entity to wind up its affairs and does not constitute or cause the dissolution of the entity.

New Sec. 35. (a) When any provision of this act requires any instrument to be filed with the secretary of state, such instrument shall be filed in accordance with this section:

(1) The document shall contain the information required by this act;

(2) the document shall be in a record;

(3) the document shall be in the English language, but the name of an entity need not be in English if written in English letters or Arabic or Roman numerals;

(4) the document shall be signed:

(A) By an officer of a domestic or foreign corporation;

(B) by a person authorized by a domestic or foreign entity that is not a corporation; or

(C) if the entity is in the hands of a receiver, trustee or other court-appointed fiduciary, by that person;

(5) the instrument shall state the name and capacity of the person that signed it.

(6) any signature on instruments authorized to be filed with the secretary of state under this act may be a facsimile, a conformed signature or an electronically transmitted signature. The execution of any instrument required to be filed with the secretary of state shall constitute an oath or affirmation, under the penalties of perjury, that the facts stated in the instrument are true; and

(7) the instrument shall be delivered to the office of the secretary of state for filing. Delivery may be made by electronic transmission if and to the extent permitted by the secretary of state.

(b) When a document is delivered to the office of the secretary of state for filing, the correct filing fee and any tax, fee or penalty required to be paid by this act or other law shall be paid. The secretary of state shall establish by rule and regulation the filing fees for instruments filed pursuant to this act.

(c) Upon delivery of the instrument and upon tender of the required fees and any taxes:

(1) The secretary of state shall certify that the instrument has been filed in the office of secretary of state by endorsing upon the original signed instrument the word "Filed" and the date and hour of its filing. This endorsement is the "filing date" of the instrument and is conclusive of the date and time of its filing in the absence of actual fraud. The secretary of state shall thereupon record the endorsed instrument in an electronic medium; and

(2) the secretary of state shall return a certified copy of the recorded instrument.

(d) Any instrument filed in accordance with this section shall be effective upon its filing date unless a later effective date, not to exceed 90 days from the date of filing, was specified in the instrument.

(e) If any instrument authorized to be filed with the secretary of state is filed and is inaccurately, defectively or erroneously executed or otherwise defective in any respect, the secretary of state shall not be liable to any person for the preclearance for filing, the acceptance for filing or the filing and indexing such instrument.

(f) Whenever a provision of this act permits any of the terms of an

agreement or a filed document to be dependent on facts objectively ascertainable outside the agreement or filed document, the following rules apply:

(1) The manner in which the facts will operate upon the terms of the agreement or filed document must be set forth in the agreement or filed document;

(2) the facts may include, but are not limited to:

(A) Any of the following that is available in a nationally recognized news or information medium either in print or electronically, statistical or market indices, market prices of any security or group of securities, interest rates, currency exchange rates or similar economic or financial data;

(B) a determination or action by any person or body, including the entity or any other party to an agreement or filed document; or

(C) the terms of, or actions taken under, an agreement to which the entity is a party or any other agreement or document;

(3) in this subsection, "filed document" means a document filed with the secretary of state under this act. The following provisions of an agreement or filed document may not be made dependent on facts outside the agreement or filed document:

(A) The name and address of any person required in a filed document;

(B) the registered office of any entity required in a filed document;

(C) the resident agent of any entity required in a filed document;

(D) the number of authorized shares and designation of each class or series of shares of a corporation;

(E) the effective date of a filed document; and

(F) any required statement in a filed document of the manner in which that approval was given;

(5) if a provision of a filed document is made dependent on a fact ascertainable outside of the filed document and that fact is not ascertainable by reference to a source described in subsection (c)(2)(A) or a document that is a matter of public record, or if the affected interest holders have not received notice of the fact from the entity, the entity shall file with the secretary of state a certificate of amendment setting forth the fact promptly after the fact referred to is first ascertainable or thereafter changes.

New Sec. 36. The secretary of state may prescribe and furnish on request forms for documents required or permitted to be filed by this act but their use is not mandatory.

New Sec. 37. (a) A domestic or foreign entity may correct an instrument filed with the secretary of state if:

(1) The document contains an inaccuracy; or

(2) the document was defectively signed.

(b) An instrument is corrected by filing with the secretary of state a certificate of correction that:

(1) Describes the instrument to be corrected and states its filing date or has attached a copy of the instrument;

(2) specifies the inaccuracy or defect to be corrected; and

(3) corrects the inaccuracy or defect.

(c) In lieu of filing a certificate of correction, the instrument may be corrected by filing with the secretary of state a corrected instrument. The corrected instrument shall be specifically designated as such in its heading, shall specify the inaccuracy or defect to be corrected, and shall set forth the entire instrument in corrected form.

(d) A correction is effective on the effective date of the instrument it corrects except as to persons relying on the uncorrected instrument and adversely affected by the correction. As to those persons, the correction is effective when filed.

New Sec. 38. A certified copy of the instrument from the secretary of state conclusively establishes that the original instrument is on file with the secretary of state.

New Sec. 39. In applying and construing this act, consideration must be given to the need to promote consistency of the law with respect to its subject matter among states that enact it.

New Sec. 40. This act modifies, limits and supersedes the federal electronic signatures in global and national commerce act 15 U.S.C. §

7001, et seq., but does not modify, limit or supersede section 101(c) of that act 15 U.S.C. § 7001(c) or authorize electronic delivery of any of the notices described in section 103(b) of that act 15 U.S.C. § 7003(b).

New Sec. 41. This act does not affect an action or proceeding commenced or right accrued before the effective date of this act.

New Sec. 42. (a) A domestic corporation may merge or consolidate with or into any other entity in accordance with the business entity transactions act, section 1, et seq., and amendments thereto.

(b) This section shall be part of and supplemental to the Kansas general corporation code, K.S.A. 17-6001 et seq., and amendments thereto.

Sec. 43. K.S.A. 17-7675 is hereby amended to read as follows: 17-7675. Articles of organization shall be canceled upon the dissolution and the completion of winding up of a limited liability company, or as provided in subsection (d) of K.S.A. 17-7666, and amendments thereto, or K.S.A. 17-76,139, and amendments thereto, or upon the filing of a certificate of merger or consolidation if the limited liability company is not the surviving or resulting entity in a merger or consolidation~~, or upon the conversion of a domestic limited liability company approved in accordance with K.S.A. 17-7685, and amendments thereto, by filing~~. A certificate of cancellation *shall be filed* with the secretary of state to accomplish the cancellation of articles of organization upon the dissolution and the completion of winding up of a limited liability company ~~or upon the conversion of a domestic limited liability company approved in accordance with K.S.A. 17-7685, and amendments thereto, and which~~. *The certificate* shall set forth:

(a) The name of the limited liability company;

(b) the reason for filing the certificate of cancellation;

(c) the future effective date or time ~~(~~, which shall be a date or time certain not later than 90 days after the date of filing~~)~~ of cancellation if it is not to be effective upon the filing of the certificate; *and*

(d) any other information the person filing the certificate of cancellation determines.

Sec. 44. K.S.A. 17-7681 is hereby amended to read as follows: 17-7681. (a) Pursuant to an agreement of merger or consolidation, a domestic limited liability company may merge or consolidate with or into one or more limited liability companies formed under the laws of this state or any other state, with such limited liability company as the agreement shall provide being the surviving or resulting limited liability company. Unless otherwise provided in the limited liability company operating agreement, a merger or consolidation shall be approved by each domestic limited liability company which is to merge or consolidate by the members, or if there is more than one class or group of members, then by each class or group of members, in either case, by the affirmative vote or consent of not less than a majority in interest of the remaining members. In connection with a merger or consolidation hereunder, rights or securities of, or interests in, a domestic limited liability company which is a constituent party to the merger or consolidation may be exchanged for or converted into cash, property, rights or securities of, or interests in, the surviving or resulting limited liability company or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, rights or securities of, or interests in, a limited liability company which is not the surviving or resulting limited liability company in the merger or consolidation. Notwithstanding prior approval, an agreement of merger or consolidation may be terminated or amended pursuant to a provision for such termination or amendment contained in the agreement of merger or consolidation.

(b) The limited liability company surviving or resulting in or from the merger or consolidation shall file a certificate of merger or consolidation with the secretary of state. The certificate of merger or consolidation shall state:

(1) The name and jurisdiction of formation or organization of each of the limited liability companies which is to merge or consolidate;

(2) that an agreement of merger or consolidation has been approved and executed by each of the limited liability companies which is to merge or consolidate;

(3) the name of the surviving or resulting limited liability company;

(4) the future effective date or time of the merger or consolidation

if it is not to be effective upon the filing of the certificate of merger or consolidation, which date shall, in no event, exceed 90 days after the date the certificate is filed in the secretary of state's office;

(5) that the agreement of merger or consolidation is on file at a place of business of the surviving or resulting limited liability company, and shall state the address thereof;

(6) that a copy of the agreement of merger or consolidation will be furnished by the surviving or resulting limited liability company, on request and without cost, to any member of any limited liability company which is to merge or consolidate; and

(7) if the surviving or resulting entity is not a domestic limited liability company, a statement that such surviving entity agrees that it may be served with process in the state of Kansas in any action, suit or proceeding for the enforcement of any obligation of any domestic limited liability company which is to merge or consolidate, irrevocably appointing the secretary of state as its agent to accept service of process in any such action, suit or proceeding and specifying the address to which a copy of such process shall be mailed to it by the secretary of state.

(c) Unless a future effective date or time is provided in a certificate of merger or consolidation, in which event a merger or consolidation shall be effective at any such future effective date or time, a merger or consolidation shall be effective upon the filing with the secretary of state of a certificate of merger or consolidation. If a certificate of merger or consolidation provides for a future effective date or time and if an agreement of merger or consolidation is amended to change the future effective date or time, or to change any other matter described in the certificate of merger or consolidation so as to make the certificate of merger or consolidation false in any material respect, as permitted by subsection (b) of this section prior to the future effective date or time, the certificate of merger or consolidation shall be amended by the filing of a certificate of amendment of a certificate of merger or consolidation which shall identify the certificate of merger or consolidation and the agreement of merger or consolidation which has been amended and shall state that the agreement of merger or consolidation has been amended and shall set forth the amendment to the certificate of merger or consolidation. If a certificate of merger or consolidation provides for a future effective date or time and if an agreement of merger or consolidation is terminated as permitted by subsection (a) of this section prior to the future effective date or time, the certificate of merger or consolidation shall be terminated by the filing of a certificate of termination of a merger or consolidation which shall identify the certificate of merger or consolidation and the agreement of merger or consolidation which has been terminated and shall state that the agreement of merger or consolidation has been terminated.

(d) A certificate of merger or consolidation shall act as a certificate of cancellation for a domestic limited liability company which is not the surviving or resulting entity in the merger or consolidation.

(e) An agreement of merger or consolidation approved in accordance with subsection (a) of this section may:

(1) Effect any amendment to the operating agreement; or

(2) effect the adoption of a new operating agreement.

Any amendment to an operating agreement or adoption of a new operating agreement made pursuant to the foregoing provision shall be effective at the effective time or date of the merger or consolidation. The provisions of this subsection shall not be construed to limit the accomplishment of a merger or of any of the matters referred to herein by any other means provided for in an operating agreement or other agreement or as otherwise permitted by law, including that the operating agreement of any constituent limited liability company to the merger or consolidation (including a limited liability company formed for the purpose of consummating a merger or consolidation) shall be the operating agreement of the surviving or resulting limited liability company.

(f) When any merger or consolidation shall have become effective under this section, for all purposes of the laws of the state of Kansas, all of the rights, privileges and powers of each of the limited liability companies that have merged or consolidated, and all property, real, personal and mixed, and all debts due to any of the limited liability companies, as well as all other things and causes of action belonging to each of such

limited liability companies, shall be vested in the surviving or resulting limited liability company, and shall thereafter be the property of the surviving or resulting limited liability company as they were of each of the limited liability companies that have merged or consolidated, and the title to any real property vested by deed or otherwise, under the laws of the state of Kansas, in any of such limited liability companies, shall not revert or be in any way impaired by reason of this section, but all rights of creditors and all liens upon any property of any of the limited liability companies shall be preserved unimpaired, and all debts, liabilities and duties of each of the limited liability companies that have merged or consolidated shall thenceforth attach to the surviving or resulting limited liability company and may be enforced against it to the same extent as if the debts, liabilities and duties had been incurred or contracted by it. Unless otherwise agreed, a merger or consolidation of a limited liability company, including a limited liability company which is not the surviving or resulting entity in the merger or consolidation, shall not require such limited liability company to wind up its affairs under K.S.A. 17-76,118, and amendments thereto or pay its liabilities and distribute its assets under K.S.A. 17-76,119, and amendments thereto.

(g) A limited liability company may merge or consolidate with or into ~~one or more corporations, business trusts or associations, real estate investment trusts, common-law trusts, or any other unincorporated business, including a partnership (whether general, limited or a registered limited liability partnership), in accordance with the provisions of K.S.A. 17-7701, and amendments thereto~~ *any other entity in accordance with the business entity transactions act, section 1 et seq., and amendments thereto*.

Sec. 45. K.S.A. 56a-401 is hereby amended to read as follows: 56a-401. (a) Each partner is deemed to have an account that is:

(1) Credited with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, the partner contributes to the partnership and the partner's share of the partnership profits; and

(2) charged with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, distributed by the partnership to the partner and the partner's share of the partnership losses.

(b) Each partner is entitled to an equal share of the partnership profits and is chargeable with a share of the partnership losses in proportion to the partner's share of the profits.

(c) A partnership shall reimburse a partner for payments made and indemnify a partner for liabilities incurred by the partner in the ordinary course of the business of the partnership or for the preservation of its business or property.

(d) A partnership shall reimburse a partner for an advance to the partnership beyond the amount of capital the partner agreed to contribute.

(e) A payment or advance made by a partner which gives rise to a partnership obligation under subsection (c) or (d) constitutes a loan to the partnership which accrues interest from the date of the payment or advance.

(f) Each partner has equal rights in the management and conduct of the partnership business.

(g) A partner may use or possess partnership property only on behalf of the partnership.

(h) A partner is not entitled to remuneration for services performed for the partnership, except for reasonable compensation for services rendered in winding up the business of the partnership.

(i) *Except as provided in the business entity transactions act, section 1 et seq., and amendments thereto,* a person may become a partner only with the consent of all of the partners.

(j) A difference arising as to a matter in the ordinary course of business of a partnership may be decided by a majority of the partners. An act outside the ordinary course of business of a partnership and an amendment to the partnership agreement may be undertaken only with the consent of all of the partners.

(k) This section does not affect the obligations of a partnership to other persons under K.S.A. 56a-301*, and amendments thereto*.

Sec. 46. K.S.A. 56a-502 is hereby amended to read as follows: 56a-502. *Except as provided in the business entity transactions act, section 1 et seq., and amendments thereto,* the only transferable interest of a partner in the partnership is the partner's share of the profits and losses of the partnership and the partner's right to receive distributions. The interest *of a partner* is personal property.

Sec. 47. K.S.A. 56a-905 is hereby amended to read as follows: 56a-905. (a) Pursuant to a plan of merger approved as provided in subsection (c), a partnership may be merged with one or more partnerships ~~or limited partnerships~~.

(b) The plan of merger must set forth:

(1) The name of each partnership ~~or limited partnership~~ that is a party to the merger;

(2) the name of the surviving ~~entity~~ *partnership* into which the other partnerships ~~or limited partnerships~~ will merge;

(3) ~~whether the surviving entity is a partnership or a limited partnership and the status of each partner;~~

~~(4)~~ the terms and conditions of the merger;

~~(5)~~ *(4)* the manner and basis of converting the interests of each party to the merger into interests or obligations of the surviving ~~entity~~ *partnership*, or into money or other property in whole or part; and

~~(6)~~ *(5)* the street address of the surviving ~~entity's~~ *partnership's* principal office.

(c) The plan of merger must be approved~~:~~

~~(1) In the case of a partnership that is a party to the merger,~~ by all of the partners, or a number or percentage specified for merger in the partnership agreement~~; and~~

~~(2) in the case of a limited partnership that is a party to the merger, by the vote required for approval of a merger by the law of the state or foreign jurisdiction in which the limited partnership is organized and, in the absence of such a specifically applicable law, by all of the partners, notwithstanding a provision to the contrary in the partnership agreement~~.

(d) After a plan of merger is approved and before the merger takes effect, the plan may be amended or abandoned as provided in the plan.

(e) The merger takes effect on the later of:

~~(1) The approval of the plan of merger by all parties to the merger, as provided in subsection (c),~~

~~(2)~~ *(1)* The filing of all documents required by law to be filed as a condition to the effectiveness of the merger; or

~~(3)~~ *(2)* any effective date specified in the plan of merger.

(f) A merger in which a partnership and another form of entity are parties is governed by the business entity transactions act, section 1 et seq., and amendments thereto.

Sec. 48. K.S.A. 56a-906 is hereby amended to read as follows: 56a-906. (a) When a merger takes effect:

(1) The separate existence of every partnership ~~or limited partnership~~ that is a party to the merger, other than the surviving entity, ceases;

(2) all property owned by each of the merged partnerships ~~or limited partnerships~~ vests in the surviving ~~entity~~ *partnership*;

(3) all obligations of every partnership ~~or limited partnership~~ that is a party to the merger ~~become~~ *are* the obligations of the surviving ~~entity, and~~ *partnership;*

(4) an action or proceeding pending against a partnership ~~or limited partnership~~ that is a party to the merger may be continued as if the merger had not occurred, or the surviving ~~entity~~ *partnership* may be substituted as a party to the action or proceeding~~.~~*; and*

(5) if the plan of merger provides for a person to become a partner in a surviving domestic partnership, the person becomes a partner without the need for the consent that would otherwise be required by subsection (i) of K.S.A. 56a-401, and amendments thereto.

(b) The secretary of state of this state is the agent for service of process in an action or proceeding against a surviving foreign partnership ~~or limited partnership~~ to enforce an obligation of a domestic partnership ~~or limited partnership~~ that is a party to a merger. The surviving entity shall promptly notify the secretary of state of the mailing address of its principal

office and of any change of address. Service of process shall be made in the manner prescribed by K.S.A. 60-304, and amendments thereto.

(c) A partner of the surviving partnership ~~or limited partnership~~ is liable for:

(1) All obligations of a party to the merger for which the partner was personally liable before the merger;

(2) all other obligations of the surviving ~~entity~~ *partnership* incurred before the merger by a party to the merger, but those obligations may be satisfied only out of property of the ~~entity~~ *partnership*; and

(3) except as otherwise provided in K.S.A. 56a-306, and amendments thereto, all obligations of the surviving ~~entity~~ *partnership* incurred after the merger takes effect~~, but those obligations may be satisfied only out of property of the entity if the partner is a limited partner~~.

(d) *Except as provided in K.S.A. 56a-306, and amendments thereto,* if the obligations incurred before the merger by a party to the merger are not satisfied out of the property of the surviving partnership ~~or limited partnership~~, the general partners of that party immediately before the effective date of the merger shall contribute the amount necessary to satisfy that party's obligations to the surviving ~~entity~~ *partnership*, in the manner provided in K.S.A. 56a-807 ~~or in the limited partnership act of the jurisdiction in which the party was formed~~*, and amendments thereto*, as the case may be, as if the merged party were dissolved.

(e) A partner of a party to a merger ~~who does not become~~ *is not* a partner of the surviving partnership ~~or limited partnership~~ is dissociated from the ~~entity~~ *partnership*, of which that partner was a partner, as of the date the merger takes effect. ~~The surviving entity shall cause the partner's interest in the entity to be purchased under K.S.A. 56a-701 or another statute specifically applicable to that partner's interest with respect to a merger. The surviving entity~~ *A surviving domestic partnership* is bound under K.S.A. 56a-702*, and amendments thereto,* by an act of a general partner dissociated under this subsection, and the partner is liable under K.S.A. 56a-703*, and amendments thereto,* for transactions entered into by the surviving ~~entity~~ *partnership* after the merger takes effect.

Sec. 49. K.S.A. 56a-907 is hereby amended to read as follows: 56a-907. (a) After a merger, the surviving partnership ~~or limited partnership~~ may file a statement that ~~one or more partnerships or limited partnerships~~ *the parties to the merger* have merged into the surviving ~~entity~~ *partnership*.

(b) A statement of merger must contain:

(1) The name of each partnership ~~or limited partnership~~ that is a party to the merger;

(2) the name of the surviving ~~entity~~ *partnership* into which the other partnerships ~~or limited partnership~~ were merged; *and*

(3) the street address of the surviving ~~entity's~~ *partnership's* principal office and of an office in this state, if any~~; and~~

~~(4) whether the surviving entity is a partnership or a limited partnership~~.

(c) Except as otherwise provided in subsection (d), for the purposes of K.S.A. 56a-302, *and amendments thereto,* property of the surviving partnership ~~or limited partnership which~~ *that* before the merger was held in the name of another party to the merger is property held in the name of the surviving ~~entity~~ *partnership* upon filing a statement of merger.

(d) For the purposes of K.S.A. 56a-302, *and amendments thereto,* real property of the surviving partnership ~~or limited partnership which~~ *that* before the merger was held in the name of another party to the merger is property held in the name of the surviving ~~entity~~ *partnership* upon recording a certified copy of the statement of merger in the office for recording transfers of that real property.

(e) A filed and, if appropriate, recorded statement of merger, executed and declared to be accurate pursuant to subsection (c) of K.S.A. 56a-105, *and amendments thereto,* stating the name of a partnership ~~or limited partnership~~ that is a party to the merger in whose name property was held before the merger and the name of the surviving ~~entity~~ *partnership*, but not containing all of the other information required by subsection (b), operates with respect to the partnerships ~~or limited partnerships~~ named to the extent provided in subsections (c) and (d).

Sec. 50. K.S.A. 56a-908 is hereby amended to read as follows: 56a-

908. ~~This article is~~ *K.S.A. 56a-901 through 56a-908, and amendments thereto, are* not exclusive. Partnerships ~~or limited partnerships~~ may be ~~converted or~~ merged in any other manner provided by law.

Sec. 51. K.S.A. 17-7675, 17-7681, 17-7684, 17-7685, 17-7701, 17-7702, 17-7703, 17-7704, 17-7705, 17-7706, 17-7707, 17-7708, 17-7709, 56a-401, 56a-502, 56a-901, 56a-902, 56a-903, 56a-904, 56a-905, 56a-906, 56a-907 and 56a-908 are hereby repealed.

Sec. 52. This act shall take effect and be in force from and after July 1, 2010, and its publication in the statute book.

I hereby certify that the above BILL originated in the SENATE, and passed that body

_____

SENATE concurred in
HOUSE amendments _____

_____
President of the Senate.

_____
Secretary of the Senate.

Passed the HOUSE
as amended _____

_____
Speaker of the House.

_____
Chief Clerk of the House.

APPROVED _____

_____
Governor.