As Further Amended by House Committee

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Session of 2019

HOUSE BILL No. 2401

By Committee on Federal and State Affairs

3-19

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

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

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

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

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

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

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

(b) Notwithstanding the provisions of subsection (a), a quorum shall
consist of holders of no less than 10% of the shares entitled to vote at the
meeting, if the corporation has over 500 stockholders, and the
corporation's articles of incorporation or bylaws provide that no stockholder may vote more than one share. The provisions of this
subsection shall expire on July 1, 2023.

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

(1) To change its corporate name;
(2) to change, substitute, enlarge or diminish the nature of its business
or its corporate powers and purposes;
(3) to increase or decrease its authorized capital stock or to reclassify
the same, by changing the number, par value, designations, preferences, or
relative, participating, optional or other special rights of the shares, or the
qualifications, limitations or restrictions of such rights, or by changing
shares with par value into shares without par value, or shares without par
value into shares with par value either with or without increasing or
decreasing the number of shares, or by subdividing or combining the
outstanding shares of any class or series into a greater or lesser number of
outstanding shares;
(4) to cancel or otherwise affect the right of the holders of the shares
of any class to receive dividends which have accrued but have not been
declared;
(5) to create new classes of stock having rights and preferences either
prior and superior or subordinate and inferior to the stock of any class then
authorized, whether issued or unissued;
(6) to change the period of its duration. Any or all such changes or
alterations may be effected by one certificate of amendment; or
(7) to delete: (A) Such provisions of the original articles of
incorporation which named the incorporator or incorporators, the initial
board of directors and the original subscribers for shares; and (B) such
provisions contained in any amendment to the articles of incorporation as
were necessary to effect a change, exchange, reclassification, subdivision,
combination or cancellation of stock, if such change, exchange,
reclassification, subdivision, combination or cancellation has become
effective.
(b) Every amendment authorized by subsection (a) shall be made and
effected in the following manner:
(1) (A) If the corporation has capital stock, its board of directors shall
adopt a resolution setting forth the amendment proposed, declaring its
advisability, and either calling a special meeting of the stockholders
entitled to vote for the consideration of such amendment or directing that
the amendment proposed be considered at the next annual meeting of the
stockholders, except that unless otherwise expressly required by the
articles of incorporation, no meeting or vote of stockholders shall be
required to adopt an amendment that effects only changes described in
subsection (a)(1) or (a)(7). Such special or annual meeting shall be called
and held upon notice in accordance with K.S.A. 17-6512, and amendments
thereto. The notice shall set forth such amendment in full or a brief
summary of the changes to be effected thereby unless such notice
constitutes a notice of internet availability of proxy materials under the
rules promulgated under the securities exchange act of 1934. At the
meeting a vote of the stockholders entitled to vote thereon shall be taken
for and against any proposed amendment that requires adoption by
stockholders. If no vote of stockholders is required to effect such
amendment, or if a majority of the outstanding stock entitled to vote
thereon and a majority of the outstanding stock of each class entitled to
vote thereon as a class have been voted in favor of the amendment, a
certificate setting forth the amendment and certifying that such amendment
has been duly adopted in accordance with the provisions of this section
shall be executed and filed, and shall become effective, in accordance with
K.S.A.—2018 2019 Supp. 17-7908 through 17-7911, and amendments
thereto.
(B) Notwithstanding the provisions of subparagraph (A), a
corporation may amend its articles of incorporation by a majority of a
quorum voting at a special or annual meeting, if the corporation has over
500 stockholders, and the corporation's articles of incorporation or
byslaws provide that no stockholder may vote more than one share. The provisions of this subparagraph shall expire on July 1, 2023.

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

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

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

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

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

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