

**17-12,102. Same; applicability of restrictions of act.** The restrictions contained in this act shall not apply if:

(a) The corporation's original articles of incorporation contain a provision expressly electing not to be governed by this act;

(b) the corporation, by action of its board of directors, adopts an amendment to its bylaws within one year of the effective date of this act expressly electing not to be governed by this act, which amendment shall not be further amended by the board of directors;

(c) the corporation, by action of its stockholders, adopts an amendment to its articles of incorporation or bylaws expressly electing not to be governed by this act. In addition to any other vote required by law, such amendment to the articles of incorporation or bylaws must be approved by the affirmative vote of a majority of the shares entitled to vote. An amendment adopted pursuant to this subsection shall not be effective until 12 months after the adoption of such amendment and shall not apply to any business combination between such corporation and any person who became an interested stockholder of such corporation on or prior to such adoption. An amendment to the bylaws adopted pursuant to this subsection shall not be further amended by the board of directors;

(d) the corporation does not have a class of voting stock that is:

(1) Listed on a national securities exchange;

(2) authorized for quotation on an interdealer quotation system of a registered national securities association; or

(3) held of record by more than 2,000 stockholders, unless any of the foregoing results from action taken, directly or indirectly, by an interested stockholder or from a transaction in which a person becomes an interested stockholder;

(e) a stockholder becomes an interested stockholder inadvertently and as soon as practicable divests sufficient shares so that the stockholder ceases to be an interested stockholder and would not, at any time within the three-year period immediately prior to a business combination between the corporation and such stockholder, have been an interested stockholder but for the inadvertent acquisition; or

(f) (1) the business combination is proposed prior to the consummation or abandonment, and subsequent to the earlier of the public announcement or the notice required hereunder, of a proposed transaction which:

(A) Constitutes one of the transactions provided in subsection (f)(2);

(B) is with or by a person who either was not an interested stockholder during the previous three years or who became an interested stockholder with the approval of the corporation's board of directors; and

(C) is approved or not opposed by a majority of the members of the board of directors then in office, but not less than one, who were directors prior to any person becoming an interested stockholder during the previous three years or were recommended for election or elected to succeed such directors;

(2) the proposed transactions provided in subsection (f)(1) are limited to a:

(A) Merger or consolidation of the corporation, except for a merger in which, pursuant to subsection (f) of K.S.A. 17-6701, and amendments thereto, no vote of the stockholders of the corporation is required;

(B) sale, lease, exchange, mortgage, pledge, transfer or other disposition, in one transaction or a series of transactions, whether as part of a dissolution or otherwise, of assets of the corporation or of any direct or indirect majority-owned subsidiary of the corporation, other than to any direct or indirect wholly owned subsidiary or to the corporation, having an aggregate market value equal to 50% or more of either that aggregate market value of all of the assets of the corporation determined on a consolidated basis or the aggregate market value of all the outstanding stock of the corporation; or

(C) proposed tender or exchange offer for 50% or more of the outstanding voting stock of the corporation;

(3) the corporation shall give not less than 20 days' notice to all interested stockholders prior to the consummation of any of the transactions described in subsections (f)(2)(A) and (f)(2)(B);

(4) notwithstanding the provisions of subsections (a) through (d), a corporation may elect by a provision of its original articles of incorporation or any amendment thereto to be governed by this act. Such amendment to the articles of incorporation shall not apply to restrict a business combination between the corporation and an interested stockholder of the corporation if the interested stockholder became such prior to the effective date of the amendment.

**History:** L. 1989, ch. 75, § 3; July 1.