

1 STATE OF OKLAHOMA

2 1st Session of the 55th Legislature (2015)

3 SENATE BILL 729

By: Shortey

4  
5  
6 AS INTRODUCED

7 An Act relating to religious-based entities; creating  
8 the Oklahoma Religious-Based Entity Act; providing  
9 short title; construing provisions; defining terms;  
10 specifying requirements for identification of certain  
11 entities; establishing applicability of certain acts  
12 to certain entities; authorizing creation of certain  
13 entities for specified purposes; establishing  
14 requirements for creation as a certain entity;  
15 stating effects of failure to comply with certain  
16 requirements; establishing requirements for certain  
17 actions related to certain entities; establishing  
18 certain duties of managers or owners of certain  
19 entities; prohibiting personal liability of managers  
20 or owners of certain entities for certain actions;  
21 providing for validity of certain conveyances;  
22 authorizing certain derivative actions; requiring  
23 inclusion of certain records; amending 18 O.S. 2011,  
24 Section 1091, which relates to appraisal rights;  
providing for appraisal rights for shares of certain  
entities; providing for codification; and providing  
an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified  
in the Oklahoma Statutes as Section 701 of Title 18, unless there is  
created a duplication in numbering, reads as follows:

1 This act shall be known and may be cited as the "Oklahoma  
2 Religious-Based Entity Act".

3 SECTION 2. NEW LAW A new section of law to be codified  
4 in the Oklahoma Statutes as Section 702 of Title 18, unless there is  
5 created a duplication in numbering, reads as follows:

6 This act shall be construed to effectuate its general purposes  
7 to:

8 1. Assure that adoption of an entity form for the conduct of  
9 business for a profit does not curtail the right to the free  
10 exercise of assembly, association, speech, or religion by the  
11 owners;

12 2. Not endorse any particular religion or establish any  
13 religion;

14 3. Expressly provide for consideration of the religious-based  
15 purposes of a religious-based entity by the managers while they  
16 discharge their duties as managers; and

17 4. Provide a specific framework for entities operated for  
18 profit to pursue religious-based purposes, separate from the ability  
19 to pursue such purposes under the laws of this state.

20 SECTION 3. NEW LAW A new section of law to be codified  
21 in the Oklahoma Statutes as Section 703 of Title 18, unless there is  
22 created a duplication in numbering, reads as follows:

23 As used in this act:  
24

1        1. "Associated act" means the Oklahoma General Corporation Act,  
2 in the case of a corporation formed under that act; the Uniform  
3 Limited Partnership Act of 2010, in the case of a limited  
4 partnership formed under or subject to that act; or the Oklahoma  
5 Limited Liability Company Act, in the case of a limited liability  
6 company formed under that act;

7        2. "Closely-held" means the interests of the entity and the  
8 equity interests of any direct or indirect owner of the entity:

9            a. are not traded on a national securities exchange or on  
10 the over-the-counter market, and

11           b. are not required to be registered pursuant to Section  
12 12 of the Securities Exchange Act of 1934 or subject  
13 to Section 15(d) of the Securities Exchange Act of  
14 1934;

15        3. "Entity agreement" means bylaws of a corporation, a limited  
16 partnership agreement of a limited partnership or an operating  
17 agreement of a limited liability company;

18        4. "Formation instrument" means a certificate of incorporation  
19 of a corporation, a certificate of limited partnership of a limited  
20 partnership or articles of organization of a limited liability  
21 company;

22        5. "Interest" means a share of stock in a corporation, a  
23 partnership interest in a limited partnership or a membership  
24 interest in a limited liability company;

1       6. "Manager" means:

2           a. a director or officer in the case of a corporation,

3           b. a general partner or any of its managers, directors or  
4           officers in the case of a limited partnership, or

5           c. a manager, director or officer in the case of a  
6           limited liability company;

7       7. "Owner" means a shareholder in the case of a corporation, a  
8       general or limited partner in the case of a limited partnership or a  
9       member in the case of a limited liability company;

10       8. "Religious-based entity" means a domestic corporation,  
11       limited partnership or limited liability company including, but not  
12       limited to, a professional entity, business development corporation  
13       or farming or ranching business corporation that satisfies the  
14       requirements set forth in Section 7 of this act; and

15       9. "Religious-based purpose" means one or more purposes  
16       relating to the exercise of religion. The term "exercise of  
17       religion" means religious exercise and includes any exercise of  
18       religion, whether or not compelled by or central to a system of  
19       religious belief. The term "religion" includes all aspects of  
20       religious observance and practice, as well as belief.

21       SECTION 4.       NEW LAW       A new section of law to be codified  
22       in the Oklahoma Statutes as Section 704 of Title 18, unless there is  
23       created a duplication in numbering, reads as follows:

1       The name of a religious-based entity shall end with one or more  
2 of the words or abbreviations permitted in the applicable associated  
3 acts; provided, that such words or abbreviations shall be modified  
4 and preceded by the words "Religious-Based" or the letters "R.B." or  
5 "RB" or some abbreviation of the combination, with or without  
6 punctuation. If a religious-based entity is subject to a  
7 requirement, whether by another act, rule or regulation, requiring  
8 additional words or abbreviations to be reflected in its name, then  
9 such requirements shall be considered in addition to the  
10 requirements of this section.

11       SECTION 5.       NEW LAW       A new section of law to be codified  
12 in the Oklahoma Statutes as Section 705 of Title 18, unless there is  
13 created a duplication in numbering, reads as follows:

14       The applicable associated act shall apply to each religious-  
15 based entity, and each religious-based entity shall enjoy the powers  
16 and privileges and be subject to the duties, restrictions and  
17 obligations of other similarly situated business entities, except  
18 where inconsistent with this act. A religious-based entity may be  
19 subject simultaneously to this act and one or more other acts,  
20 including but not limited to, the applicable associated act or the  
21 Professional Entity Act. Failure to satisfy the requirements of  
22 this act, at any time or from time to time, shall not affect an  
23 entity's rights, privileges, immunities, status or good standing  
24 under the applicable associated act.

1 SECTION 6. NEW LAW A new section of law to be codified  
2 in the Oklahoma Statutes as Section 706 of Title 18, unless there is  
3 created a duplication in numbering, reads as follows:

4 A religious-based entity may be formed for any purpose permitted  
5 by the associated act. If a religious-based entity is subject to a  
6 requirement, whether by another act, rule or regulation, requiring  
7 additional purposes to be stated in its formation instrument, then  
8 such requirements shall be considered in addition to the  
9 requirements of this act.

10 SECTION 7. NEW LAW A new section of law to be codified  
11 in the Oklahoma Statutes as Section 707 of Title 18, unless there is  
12 created a duplication in numbering, reads as follows:

13 A. In order to be a religious-based entity:

14 1. The formation instrument shall state at least one religious-  
15 based purpose and each such purpose is expressly identified as a  
16 "Religious-Based Purpose";

17 2. The entity shall be closely-held;

18 3. The entity shall be:

19 a. a domestic corporation other than a non-profit  
20 corporation,

21 b. a domestic limited partnership, or

22 c. a domestic limited liability company; and

23 4. The formation instrument includes statements that:

24 a. the entity elects to be subject to this act,

1           b.    upon filing the formation instrument, the entity will  
2                satisfy the requirements of this subsection,

3           c.    the owners of eighty percent (80%) of the interests  
4                entitled to vote have approved the religious-based  
5                purpose stated in the formation instrument.

6           B.   Failure by an entity to comply with the requirements set  
7   forth in subsection A of this section shall result in the entity  
8   ceasing to be a religious-based entity immediately upon such  
9   failure, but shall not affect an entity's rights, privileges,  
10   immunities, status or good standing under the applicable associated  
11   act or other laws of this state. Within a reasonable time after an  
12   entity ceases to be religious-based entity, such entity shall amend  
13   its formation instrument to eliminate the statements required by  
14   subparagraphs a and b of paragraph 4 of subsection A of this  
15   section. In order to again qualify as a religious-based entity  
16   after ceasing to qualify, an entity shall satisfy the requirements  
17   of subsection A of this section.

18           C.   Unless otherwise provided in the entity agreement, any  
19   disagreement concerning a religious-based purpose shall be  
20   determined by the owners of more than fifty percent (50%) of the  
21   interests entitled to vote.

22           SECTION 8.       NEW LAW        A new section of law to be codified  
23   in the Oklahoma Statutes as Section 708 of Title 18, unless there is  
24   created a duplication in numbering, reads as follows:

1       A. Notwithstanding any other provisions of the applicable  
2 associated act, formation instrument or entity agreement, a domestic  
3 corporation, other than a non-profit corporation, limited  
4 partnership or limited liability company that is not a religious-  
5 based entity may not, without the approval of the owners of at least  
6 eighty percent (80%) of the interests entitled to vote:

7           1. Amend its formation instrument, in accordance with the  
8 provisions of the applicable associated act or other laws, to  
9 include a statement that the entity is subject to the Oklahoma  
10 Religious-Based Entity Act; or

11           2. Merge with or into, convert to, consolidate with or agree to  
12 any share exchange with another entity if, as a result of such  
13 merger, conversion, consolidation or share exchange, the interests  
14 in such entity would become or be converted into or exchanged for  
15 the right to receive interests in a religious-based entity.

16       B. Notwithstanding any other provisions of the applicable  
17 associated act, formation instrument or entity agreement, and except  
18 as required by subsection B of Section 7 of this act, a religious-  
19 based entity may not, without the approval of the owners of at least  
20 eighty percent (80%) of the interests entitled to vote:

21           1. Amend or eliminate, in accordance with the provisions of the  
22 applicable associated act or other laws, the statements in its  
23 formation instrument that are required by subsection A of Section 7  
24 of this act; or



1        2. Merge with or into, convert to, consolidate with or agree to  
2 any share exchange with any entity that is not a religious-based  
3 entity unless the surviving entity is a religious-based entity.

4        SECTION 9.        NEW LAW        A new section of law to be codified  
5 in the Oklahoma Statutes as Section 709 of Title 18, unless there is  
6 created a duplication in numbering, reads as follows:

7        A. Subject to subsection C of this section, in discharging the  
8 duties imposed under the associated act, the formation instrument or  
9 the entity agreement, each manager shall take into account the  
10 religious-based purpose of the entity, as well as other purposes for  
11 which the entity may be formed pursuant to the associated act, and  
12 each manager shall take reasonable steps to cause the religious-  
13 based entity to comply with the requirements of Section 7 of this  
14 act. Consideration and pursuit by any manager of the religious-  
15 based purpose of the entity, even if inconsistent with any other  
16 stated purposes of the entity or detrimental to the maximization of  
17 monetary profits by the entity, will not constitute a violation of  
18 any duty otherwise owed by the manager under applicable law. Within  
19 a reasonable time after a religious-based entity ceases to qualify  
20 as a religious-based entity, the managers shall notify all owners of  
21 the failure to qualify.

22        B. No religious-based entity and no manager or owner of a  
23 religious-based entity shall have any duty to a person because of  
24 any interest of the person in any public benefit that may be created

1 or enhanced in connection with the religious-based purpose or  
2 because of any interest materially affected by the conduct of the  
3 religious-based entity in such person's capacity as such a  
4 beneficiary or potential beneficiary of the religious-based purpose.

5 C. Unless otherwise provided in the entity agreement, no  
6 manager shall be personally liable for monetary damages for failure  
7 of the religious-based entity to pursue its religious-based purpose  
8 or for any act or omission in the course of performing the duties  
9 under subsection A of this section, except to the extent such act or  
10 omission constitutes a breach of the manager's duty of loyalty, an  
11 act or omission not in good faith or which involves intentional  
12 misconduct or a knowing violation of law or a transaction from which  
13 the manager derived an improper personal benefit.

14 SECTION 10. NEW LAW A new section of law to be codified  
15 in the Oklahoma Statutes as Section 710 of Title 18, unless there is  
16 created a duplication in numbering, reads as follows:

17 No act of a religious-based entity and no conveyance or transfer  
18 of real or personal property to or by a religious-based entity shall  
19 be invalid by reason of the fact that such act or conveyance or  
20 transfer by the religious-based entity was contrary to any  
21 religious-based purpose of the entity.

22 SECTION 11. NEW LAW A new section of law to be codified  
23 in the Oklahoma Statutes as Section 711 of Title 18, unless there is  
24 created a duplication in numbering, reads as follows:

1 Notwithstanding any other provisions of the applicable  
2 associated act, and subject to compliance with subsection C of  
3 Section 7 of this act, a derivative action on behalf of a religious-  
4 based entity that attempts to enforce or that challenges or alleges  
5 non-compliance with, a religious-based purpose of such entity may be  
6 commenced or maintained only by the owners of at least five percent  
7 (5%) of the interests entitled to vote at the time of the challenged  
8 act or omission.

9 SECTION 12. NEW LAW A new section of law to be codified  
10 in the Oklahoma Statutes as Section 712 of Title 18, unless there is  
11 created a duplication in numbering, reads as follows:

12 Unless otherwise provided in the entity agreement, the records  
13 of a religious-based entity shall include reasonably detailed  
14 information regarding the religious-based entity's pursuit of its  
15 religious-based purpose, updated on an annual basis. Failure of a  
16 religious-based entity to maintain the records required by this  
17 section shall not be grounds for imposing liability on any person  
18 for the debts and obligations of the entity.

19 SECTION 13. AMENDATORY 18 O.S. 2011, Section 1091, is  
20 amended to read as follows:

21 Section 1091.

22 APPRAISAL RIGHTS

23 A. Any shareholder of a corporation of this state who holds  
24 shares of stock on the date of the making of a demand pursuant to

1 the provisions of subsection D of this section with respect to the  
2 shares, who continuously holds the shares through the effective date  
3 of the merger or consolidation, who has otherwise complied with the  
4 provisions of subsection D of this section, and who has neither  
5 voted in favor of the merger or consolidation nor consented thereto  
6 in writing pursuant to the provisions of Section 1073 of this title  
7 shall be entitled to an appraisal by the district court of the fair  
8 value of the shares of stock under the circumstances described in  
9 subsections B and C of this section. As used in this section, the  
10 word "shareholder" means a holder of record of stock in a stock  
11 corporation and also a member of record of a nonstock corporation;  
12 the words "stock" and "share" mean and include what is ordinarily  
13 meant by those words and also membership or membership interest of a  
14 member of a nonstock corporation; and "depository receipt" means an  
15 instrument issued by a depository representing an interest in one or  
16 more shares, or fractions thereof, solely of stock of a corporation,  
17 which stock is deposited with the depository. The provisions of  
18 this subsection shall be effective only with respect to mergers or  
19 consolidations consummated pursuant to an agreement of merger or  
20 consolidation entered into after November 1, 1988.

21 B. 1. Except as otherwise provided for in this subsection,  
22 appraisal rights shall be available for the shares of any class or  
23 series of stock of a constituent corporation in a merger or  
24 consolidation, or of the acquired corporation in a share

1 acquisition, to be effected pursuant to the provisions of Section  
2 1081, other than a merger effected pursuant to subsection G of  
3 Section 1081, and Section 1082, 1086, 1087, 1090.1 or 1090.2 of this  
4 title.

5 2. a. No appraisal rights under this section shall be  
6 available for the shares of any class or series of  
7 stock which stock, or depository receipts in respect  
8 thereof, at the record date fixed to determine the  
9 shareholders entitled to receive notice of and to vote  
10 at the meeting of shareholders to act upon the  
11 agreement of merger or consolidation, were either:

12 (1) listed on a national securities exchange or  
13 designated as a national market system security  
14 on an interdealer quotation system by the  
15 National Association of Securities Dealers,  
16 Inc.†, or

17 (2) held of record by more than two thousand holders.

18 No appraisal rights shall be available for any shares  
19 of stock of the constituent corporation surviving a  
20 merger if the merger did not require for its approval  
21 the vote of the shareholders of the surviving  
22 corporation as provided in subsection G of Section  
23 1081 of this title.

24

1           b. In addition, no appraisal rights shall be available  
2           for any shares of stock, or depository receipts in  
3           respect thereof, of the constituent corporation  
4           surviving a merger if the merger did not require for  
5           its approval the vote of the shareholders of the  
6           surviving corporation as provided for in subsection F  
7           of Section 1081 of this title.

8           3. Notwithstanding the provisions of paragraph 2 of this  
9           subsection, appraisal rights provided for in this section shall be  
10          available for the shares of any class or series of stock of a  
11          constituent corporation if the holders thereof are required by the  
12          terms of an agreement of merger or consolidation pursuant to the  
13          provisions of Section 1081, 1082, 1086, 1087, 1090.1 or 1090.2 of  
14          this title to accept for the stock anything except:

15           a. shares of stock of the corporation surviving or  
16           resulting from the merger or consolidation or  
17           depository receipts thereof, or

18           b. shares of stock of any other corporation, or  
19           depository receipts in respect thereof, which shares  
20           of stock or depository receipts at the effective date  
21           of the merger or consolidation will be either listed  
22           on a national securities exchange or designated as a  
23           national market system security on an interdealer  
24           quotation system by the National Association of

1 Securities Dealers, Inc. or held of record by more  
2 than two thousand holders, or

3 c. cash in lieu of fractional shares or fractional  
4 depository receipts described in subparagraphs a and b  
5 of this paragraph, or

6 d. any combination of the shares of stock, depository  
7 receipts, and cash in lieu of the fractional shares or  
8 depository receipts described in subparagraphs a, b,  
9 and c of this paragraph.

10 4. In the event all of the stock of a subsidiary Oklahoma  
11 corporation party to a merger effected pursuant to the provisions of  
12 Section 1083 of this title is not owned by the parent corporation  
13 immediately prior to the merger, appraisal rights shall be available  
14 for the shares of the subsidiary Oklahoma corporation.

15 5. Appraisal rights shall be available for the shares of any  
16 class or series of stock of a corporation in any amendment,  
17 conversion, merger, consolidation or share exchange described in  
18 Section 8 of this act. The procedures set forth in subsections D  
19 and E of this section shall apply as nearly as practicable.

20 C. Any corporation may provide in its certificate of  
21 incorporation that appraisal rights under this section shall be  
22 available for the shares of any class or series of its stock as a  
23 result of an amendment to its certificate of incorporation, any  
24 merger or consolidation in which the corporation is a constituent

1 corporation or the sale of all or substantially all of the assets of  
2 the corporation. If the certificate of incorporation contains such  
3 a provision, the procedures of this section, including those set  
4 forth in subsections D and E of this section, shall apply as nearly  
5 as is practicable.

6 D. Appraisal rights shall be perfected as follows:

7 1. If a proposed merger or consolidation for which appraisal  
8 rights are provided under this section is to be submitted for  
9 approval at a meeting of shareholders, the corporation, not less  
10 than twenty (20) days prior to the meeting, shall notify each of its  
11 shareholders entitled to appraisal rights that appraisal rights are  
12 available for any or all of the shares of the constituent  
13 corporations, and shall include in the notice a copy of this  
14 section. Each shareholder electing to demand the appraisal of the  
15 shares of the shareholder shall deliver to the corporation, before  
16 the taking of the vote on the merger or consolidation, a written  
17 demand for appraisal of the shares of the shareholder. The demand  
18 will be sufficient if it reasonably informs the corporation of the  
19 identity of the shareholder and that the shareholder intends thereby  
20 to demand the appraisal of the shares of the shareholder. A proxy  
21 or vote against the merger or consolidation shall not constitute  
22 such a demand. A shareholder electing to take such action must do  
23 so by a separate written demand as herein provided. Within ten (10)  
24 days after the effective date of the merger or consolidation, the



1 surviving or resulting corporation shall notify each shareholder of  
2 each constituent corporation who has complied with the provisions of  
3 this subsection and has not voted in favor of or consented to the  
4 merger or consolidation as of the date that the merger or  
5 consolidation has become effective; or

6 2. If the merger or consolidation is approved pursuant to the  
7 provisions of Section 1073 or 1083 of this title, either a  
8 constituent corporation before the effective date of the merger or  
9 consolidation or the surviving or resulting corporation within ten  
10 (10) days thereafter shall notify each of the holders of any class  
11 or series of stock of the constituent corporation who are entitled  
12 to appraisal rights of the approval of the merger or consolidation  
13 and that appraisal rights are available for any or all shares of  
14 such class or series of stock of the constituent corporation, and  
15 shall include in the notice a copy of this section. The notice may,  
16 and, if given on or after the effective date of the merger or  
17 consolidation, shall, also notify the shareholders of the effective  
18 date of the merger or consolidation. Any shareholder entitled to  
19 appraisal rights may, within twenty (20) days after the date of  
20 mailing of the notice, demand in writing from the surviving or  
21 resulting corporation the appraisal of the holder's shares. The  
22 demand will be sufficient if it reasonably informs the corporation  
23 of the identity of the shareholder and that the shareholder intends  
24 to demand the appraisal of the holder's shares. If the notice does

1 not notify shareholders of the effective date of the merger or  
2 consolidation either:

3 a. each constituent corporation shall send a second  
4 notice before the effective date of the merger or  
5 consolidation notifying each of the holders of any  
6 class or series of stock of the constituent  
7 corporation that are entitled to appraisal rights of  
8 the effective date of the merger or consolidation, or

9 b. the surviving or resulting corporation shall send a  
10 second notice to all holders on or within ten (10)  
11 days after the effective date of the merger or  
12 consolidation; provided, however, that if the second  
13 notice is sent more than twenty (20) days following  
14 the mailing of the first notice, the second notice  
15 need only be sent to each shareholder who is entitled  
16 to appraisal rights and who has demanded appraisal of  
17 the holder's shares in accordance with this  
18 subsection. An affidavit of the secretary or  
19 assistant secretary or of the transfer agent of the  
20 corporation that is required to give either notice  
21 that the notice has been given shall, in the absence  
22 of fraud, be prima facie evidence of the facts stated  
23 therein. For purposes of determining the shareholders  
24 entitled to receive either notice, each constituent

1 corporation may fix, in advance, a record date that  
2 shall be not more than ten (10) days prior to the date  
3 the notice is given; provided, if the notice is given  
4 on or after the effective date of the merger or  
5 consolidation, the record date shall be the effective  
6 date. If no record date is fixed and the notice is  
7 given prior to the effective date, the record date  
8 shall be the close of business on the day next  
9 preceding the day on which the notice is given.

10 E. Within one hundred twenty (120) days after the effective  
11 date of the merger or consolidation, the surviving or resulting  
12 corporation or any shareholder who has complied with the provisions  
13 of subsections A and D of this section and who is otherwise entitled  
14 to appraisal rights, may file a petition in district court demanding  
15 a determination of the value of the stock of all such shareholders;  
16 provided, however, at any time within sixty (60) days after the  
17 effective date of the merger or consolidation, any shareholder shall  
18 have the right to withdraw the demand of the shareholder for  
19 appraisal and to accept the terms offered upon the merger or  
20 consolidation. Within one hundred twenty (120) days after the  
21 effective date of the merger or consolidation, any shareholder who  
22 has complied with the requirements of subsections A and D of this  
23 section, upon written request, shall be entitled to receive from the  
24 corporation surviving the merger or resulting from the consolidation

1 a statement setting forth the aggregate number of shares not voted  
2 in favor of the merger or consolidation and with respect to which  
3 demands for appraisal have been received and the aggregate number of  
4 holders of the shares. The written statement shall be mailed to the  
5 shareholder within ten (10) days after the shareholder's written  
6 request for a statement is received by the surviving or resulting  
7 corporation or within ten (10) days after expiration of the period  
8 for delivery of demands for appraisal pursuant to the provisions of  
9 subsection D of this section, whichever is later.

10 F. Upon the filing of any such petition by a shareholder,  
11 service of a copy thereof shall be made upon the surviving or  
12 resulting corporation, which, within twenty (20) days after service,  
13 shall file, in the office of the court clerk of the district court  
14 in which the petition was filed, a duly verified list containing the  
15 names and addresses of all shareholders who have demanded payment  
16 for their shares and with whom agreements regarding the value of  
17 their shares have not been reached by the surviving or resulting  
18 corporation. If the petition shall be filed by the surviving or  
19 resulting corporation, the petition shall be accompanied by such  
20 duly verified list. The court clerk, if so ordered by the court,  
21 shall give notice of the time and place fixed for the hearing on the  
22 petition by registered or certified mail to the surviving or  
23 resulting corporation and to the shareholders shown on the list at  
24 the addresses therein stated. Notice shall also be given by one or

1 more publications at least one (1) week before the day of the  
2 hearing, in a newspaper of general circulation published in the City  
3 of Oklahoma City, Oklahoma, or other publication as the court deems  
4 advisable. The forms of the notices by mail and by publication  
5 shall be approved by the court and the costs thereof shall be borne  
6 by the surviving or resulting corporation.

7 G. At the hearing on the petition, the court shall determine  
8 the shareholders who have complied with the provisions of this  
9 section and who have become entitled to appraisal rights. The court  
10 may require the shareholders who have demanded an appraisal of their  
11 shares and who hold stock represented by certificates to submit  
12 their certificates of stock to the court clerk for notation thereon  
13 of the pendency of the appraisal proceedings; and if any shareholder  
14 fails to comply with this direction, the court may dismiss the  
15 proceedings as to that shareholder.

16 H. After determining the shareholders entitled to an appraisal,  
17 the court shall appraise the shares, determining their fair value  
18 exclusive of any element of value arising from the accomplishment or  
19 expectation of the merger or consolidation, together with a fair  
20 rate of interest, if any, to be paid upon the amount determined to  
21 be the fair value. In determining the fair value, the court shall  
22 take into account all relevant factors. In determining the fair  
23 rate of interest, the court may consider all relevant factors,  
24 including the rate of interest which the surviving or resulting

1 corporation would have to pay to borrow money during the pendency of  
2 the proceeding. Upon application by the surviving or resulting  
3 corporation or by any shareholder entitled to participate in the  
4 appraisal proceeding, the court may, in its discretion, permit  
5 discovery or other pretrial proceedings and may proceed to trial  
6 upon the appraisal prior to the final determination of the  
7 shareholder entitled to an appraisal. Any shareholder whose name  
8 appears on the list filed by the surviving or resulting corporation  
9 pursuant to the provisions of subsection F of this section and who  
10 has submitted the certificates of stock of the shareholder to the  
11 court clerk, if required, may participate fully in all proceedings  
12 until it is finally determined that the shareholder is not entitled  
13 to appraisal rights pursuant to the provisions of this section.

14 I. The court shall direct the payment of the fair value of the  
15 shares, together with interest, if any, by the surviving or  
16 resulting corporation to the shareholders entitled thereto.  
17 Interest may be simple or compound, as the court may direct.  
18 Payment shall be made to each shareholder, in the case of holders of  
19 uncertificated stock immediately, and in the case of holders of  
20 shares represented by certificates upon the surrender to the  
21 corporation of the certificates representing the stock. The court's  
22 decree may be enforced as other decrees in the district court may be  
23 enforced, whether the surviving or resulting corporation be a  
24 corporation of this state or of any other state.

1 J. The costs of the proceeding may be determined by the court  
2 and taxed upon the parties as the court deems equitable in the  
3 circumstances. Upon application of a shareholder, the court may  
4 order all or a portion of the expenses incurred by any shareholder  
5 in connection with the appraisal proceeding, including, without  
6 limitation, reasonable ~~attorney's~~ attorney fees and the fees and  
7 expenses of experts, to be charged pro rata against the value of all  
8 of the shares entitled to an appraisal.

9 K. From and after the effective date of the merger or  
10 consolidation, no shareholder who has demanded appraisal rights as  
11 provided for in subsection D of this section shall be entitled to  
12 vote the stock for any purpose or to receive payment of dividends or  
13 other distributions on the stock, except dividends or other  
14 distributions payable to shareholders of record at a date which is  
15 prior to the effective date of the merger or consolidation;  
16 provided, however, that if no petition for an appraisal shall be  
17 filed within the time provided for in subsection E of this section,  
18 or if the shareholder shall deliver to the surviving or resulting  
19 corporation a written withdrawal of the shareholder's demand for an  
20 appraisal and an acceptance of the merger or consolidation, either  
21 within sixty (60) days after the effective date of the merger or  
22 consolidation as provided for in subsection E of this section or  
23 thereafter with the written approval of the corporation, then the  
24 right of the shareholder to an appraisal shall cease; provided

1 further, no appraisal proceeding in the district court shall be  
2 dismissed as to any shareholder without the approval of the court,  
3 and approval may be conditioned upon terms as the court deems just.

4 L. The shares of the surviving or resulting corporation into  
5 which the shares of any objecting shareholders would have been  
6 converted had they assented to the merger or consolidation shall  
7 have the status of authorized and unissued shares of the surviving  
8 or resulting corporation.

9 SECTION 14. This act shall become effective November 1, 2015.

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