

**17-6429. Proceedings regarding validity of defective corporate acts and stock.** (a) Subject to subsection (e), upon application by the corporation, any successor entity to the corporation, any member of the board of directors, any record or beneficial holder of valid stock or putative stock, any record or beneficial holder of valid or putative stock as of the time of a defective corporate act ratified pursuant to K.S.A. 2016 Supp. 17-6428, and amendments thereto, or any other person claiming to be substantially and adversely affected by a ratification pursuant to K.S.A. 2016 Supp. 17-6428, and amendments thereto, the district court may:

- (1) Determine the validity and effectiveness of any defective corporate act ratified pursuant to K.S.A. 2016 Supp. 17-6428, and amendments thereto;
  - (2) determine the validity and effectiveness of the ratification of any defective corporate act pursuant to K.S.A. 2016 Supp. 17-6428, and amendments thereto;
  - (3) determine the validity and effectiveness of any defective corporate act not ratified or not ratified effectively pursuant to K.S.A. 2016 Supp. 17-6428, and amendments thereto;
  - (4) determine the validity of any corporate act or transaction and any stock, rights or options to acquire stock; and
  - (5) modify or waive any of the procedures set forth in K.S.A. 2016 Supp. 17-6428, and amendments thereto, to ratify a defective corporate act.
- (b) In connection with an action under this section, the district court may:
- (1) Declare that a ratification in accordance with and pursuant to K.S.A. 2016 Supp. 17-6428, and amendments thereto, is not effective or shall only be effective at a time or upon conditions established by the court;
  - (2) validate and declare effective any defective corporate act or putative stock and impose conditions upon such validation by the court;
  - (3) require measures to remedy or avoid harm to any person substantially and adversely affected by a ratification pursuant to K.S.A. 2016 Supp. 17-6428, and amendments thereto, or from any order of the court pursuant to this section, excluding any harm that would have resulted if the defective corporate act had been valid when approved or effectuated;
  - (4) order the secretary of state to accept an instrument for filing with an effective time specified by the court, which effective time may be prior or subsequent to the time of such order, provided that the filing date of such instrument shall be determined in accordance with K.S.A. 2016 Supp. 17-7911, and amendments thereto;
  - (5) approve a stock ledger for the corporation that includes any stock ratified or validated in accordance with this section or with K.S.A. 2016 Supp. 17-6428, and amendments thereto;
  - (6) declare that shares of putative stock are shares of valid stock or require a corporation to issue and deliver shares of valid stock in place of any shares of putative stock;
  - (7) order that a meeting of holders of valid stock or putative stock be held and exercise the powers provided to the court under K.S.A. 17-6517, and amendments thereto, with respect to such a meeting;
  - (8) declare that a defective corporate act validated by the court shall be effective as of the time of the defective corporate act or at such other time as the court shall determine;
  - (9) declare that putative stock validated by the court shall be deemed to be an identical share or fraction of a share of valid stock as of the time originally issued or purportedly issued or at such other time as the court shall determine; and
  - (10) make such other orders regarding such matters as it deems proper under the circumstances.
- (c) Service of the application under subsection (a) upon the resident agent of the corporation shall be deemed to be service upon the corporation, and no other party need be joined in order for the district court to adjudicate the matter. In an action filed by the corporation, the court may require notice of the action be provided to other persons specified by the court and permit such other persons to intervene in the action.
- (d) In connection with the resolution of matters pursuant to subsections (a) and (b), the district court may consider the following:
- (1) Whether the defective corporate act was originally approved or effectuated with the belief that the approval or effectuation was in compliance with the provisions of the Kansas general corporation code, the articles of incorporation or bylaws of the corporation;
  - (2) whether the corporation and board of directors has treated the defective corporate act as a valid act or transaction and whether any person has acted in reliance on the public record that such defective corporate act was valid;
  - (3) whether any person will be or was harmed by the ratification or validation of the defective corporate act, excluding any harm that would have resulted if the defective corporate act had been valid when approved or effectuated;
  - (4) whether any person will be harmed by the failure to ratify or validate the defective corporate act; and
  - (5) any other factors or considerations the court deems just and equitable.
- (e) Notwithstanding any other provision of this section, no action asserting:
- (1) That a defective corporate act or putative stock ratified in accordance with K.S.A. 2016 Supp. 17-6428, and amendments thereto, is void or voidable due to a failure of authorization identified in the resolution adopted in accordance with K.S.A. 2016 Supp. 17-6428(b), and amendments thereto; or
  - (2) that the district court should declare in its discretion that a ratification in accordance with K.S.A. 2016 Supp. 17-6428, and amendments thereto, not be effective or be effective only on certain conditions, may be brought after the expiration of 120 days from the later of the validation effective time and the time notice, if any, that is required to be given pursuant to K.S.A. 2016 Supp. 17-6428(g), and amendments thereto, is given with respect to such ratification, except that this subsection shall not apply to an action asserting that a ratification was not accomplished in accordance with K.S.A. 2016 Supp. 17-6428, and amendments thereto, or to any person to whom notice of the ratification was required to have been given pursuant to K.S.A. 2016 Supp. 17-6428(d) or (g), and amendments thereto, but to whom such notice was not given.
- (f) This section shall be part of and supplemental to article 64 of chapter 17 of the Kansas Statutes Annotated, and amendments thereto.

**History:** L. 2016, ch. 110, § 9; July 1.