

2023 Kansas Statutes

17-6703. Merger of parent corporation and subsidiary corporation or corporations. (a) In any case in which at least 90% of the outstanding shares of each class of the stock of a corporation or corporations, other than a corporation that has in its articles of incorporation the provisions required by K.S.A. 17-6701(g)(7), and amendments thereto, of which class there are outstanding shares that, absent this subsection, would be entitled to vote on such merger, is owned by a domestic corporation or a foreign corporation and one or more of such corporations is a domestic corporation, unless the laws of the jurisdiction or jurisdictions under which the foreign corporation or corporations are organized prohibit such merger, the parent corporation may either merge the subsidiary corporation or corporations into itself and assume all of its or their obligations, or merge itself, or itself and one or more of such other subsidiary corporations, into one of such subsidiary corporations by executing and filing, in accordance with K.S.A. 17-7908 through 17-7910, and amendments thereto, a certificate of such ownership and merger setting forth a copy of the resolution of its board of directors to so merge and the date of the adoption thereof, except that in case the parent corporation shall not own all the outstanding stock of all the subsidiary corporations, parties to a merger as provided in this section, the resolution of the board of directors of the parent corporation shall state the terms and conditions of the merger, including the securities, cash, property or rights to be issued, paid, delivered or granted by the surviving corporation upon surrender of each share of the subsidiary corporation or corporations not owned by the parent corporation, or the cancellation of some or all of such shares. Any of the terms of the resolution of the board of directors to so merge may be made dependent upon facts ascertainable outside of such resolution if the manner in which such facts shall operate upon the terms of the resolution is clearly and expressly set forth in the resolution. "Facts," as used in the preceding sentence, includes, but is not limited to, the occurrence of any event, including a determination or action by any person or body, including the corporation. If the parent corporation is not the surviving corporation, the resolution shall include provision for the pro rata issuance of stock of the surviving corporation to the holders of the stock of the parent corporation on surrender of any certificates therefor, and the certificate of ownership and merger shall state that the proposed merger has been approved by a majority of the outstanding stock of the parent corporation entitled to vote thereon at a meeting duly called and held after 20 days' notice of the purpose of the meeting given to each such stockholder at the stockholder's postal address as it appears on the records of the corporation, if the parent corporation is a domestic corporation, or the certificate shall state that the proposed merger has been adopted, approved, certified and executed by the parent corporation in accordance with the laws under which it is organized, if the parent corporation is a foreign corporation.

(b) If the surviving corporation is a foreign corporation:

- (1) K.S.A. 17-6702(d) or 17-6708(c), and amendments thereto, as applicable, shall also apply to a merger under this section; and
- (2) the terms and conditions of the merger shall obligate the surviving corporation to provide the agreement and take the actions required by K.S.A. 17-6702(d) or 17-6708(c), and amendments thereto, as applicable.

(c) If the surviving corporation is a domestic corporation, it may change its corporate name by the inclusion of a provision to that effect in the resolution of merger adopted by the directors of the parent corporation and set forth in the certificate of ownership and merger, and upon the effective date of the merger, the name of the corporation shall be changed.

(d) K.S.A. 17-6701(d), and amendments thereto, shall apply to a merger under this section and K.S.A. 17-6701(e), and amendments thereto, shall apply to a merger under this section in which the surviving corporation is the subsidiary corporation and is a domestic corporation. References to "agreement of merger" in K.S.A. 17-6701(d) and (e), and amendments thereto, shall mean, for purposes of this subsection, the resolution of merger adopted by the board of directors of the parent corporation. Any merger that effects any changes other than those authorized by this section or

made applicable by this subsection shall be accomplished under the provisions of K.S.A. 17-6701, 17-6702, 17-6707 or 17-6708, and amendments thereto. K.S.A. 17-6712, and amendments thereto, shall not apply to any merger effected under this section, except as provided in subsection (e).

(e) In the event all of the stock of a subsidiary domestic corporation party to a merger effected under this section is not owned by the parent corporation immediately prior to the merger, the stockholders of the subsidiary domestic corporation party to the merger shall have appraisal rights as set forth in K.S.A. 17-6712, and amendments thereto.

(f) This section shall apply to nonstock corporations if the parent corporation is such a corporation and is the surviving corporation of the merger, except that references to the directors of the parent corporation shall be deemed to be references to members of the governing body of the parent corporation, and references to the board of directors of the parent corporation shall be deemed to be references to the governing body of the parent corporation.

(g) Nothing in this section shall be deemed to authorize the merger of a corporation with a charitable nonstock corporation, if the charitable status of such charitable nonstock corporation would thereby be lost or impaired.

History: L. 1972, ch. 52, § 81; L. 1986, ch. 399, § 12; L. 1988, ch. 99, § 41; Revived and amended, L. 1988, ch. 100, § 41; L. 1992, ch. 270, § 17; L. 1998, ch. 189, § 15; L. 2000, ch. 39, § 30; L. 2004, ch. 143, § 51; L. 2016, ch. 110, § 71; L. 2023, ch. 66, § 31; July 1.