

2023 Kansas Statutes

17-6705. Merger or consolidation of domestic nonstock corporations. (a) Any two or more nonstock corporations of this state, whether or not organized for profit, may merge into a single surviving corporation, which may be any one of the constituent corporations, or they may consolidate into a new resulting nonstock corporation, whether or not organized for profit, formed by the consolidation, pursuant to an agreement of merger or consolidation, as the case may be, complying and approved in accordance with this section.

(b) Subject to subsection (d), the governing body of each corporation that desires to merge or consolidate shall adopt a resolution approving an agreement of merger or consolidation, and the agreement shall be executed by an authorized person in accordance with K.S.A. 17-7908, and amendments thereto, and if the agreement is filed, it shall be filed in accordance with K.S.A. 17-7910, and amendments thereto.

The agreement shall state:

- (1) The terms and conditions of the merger or consolidation;
- (2) the mode of carrying the same into effect;
- (3) in the case of a merger, such amendments or changes in the articles of incorporation of the surviving corporation as are desired to be effected by the merger, which may amend and restate the articles of incorporation of the surviving corporation in its entirety, or, if no such amendments or changes are desired, a statement that the articles of incorporation of the surviving corporation shall be its articles of incorporation;
- (4) in the case of a consolidation, that the articles of incorporation of the resulting corporation shall be as set forth in an attachment to the agreement;
- (5) the manner, if any, of converting the memberships or membership interests of each of the constituent corporations into memberships or membership interests of the corporation surviving or resulting from the merger or consolidation, or of cancelling some or all of such memberships or membership interests, and, if any memberships or membership interests of any of the constituent corporations are not to remain outstanding, to be converted solely into memberships or membership interests of the surviving or resulting corporation, or to be cancelled, the cash, property, rights or securities of any other corporation or entity that the holders of such memberships or membership interests are to receive in exchange for, or upon conversion of, such memberships or membership interests and such cash, property, rights or securities of any other corporation or entity may be in addition to or in lieu of memberships or membership interests of the surviving or resulting corporation; and
- (6) such other details or provisions as are deemed desirable, including, but not limited to, a provision for the payment of cash in lieu of the issuance or recognition of fractional shares, rights or other securities of any other corporation or entity the shares, rights or other securities of which are to be received in the merger or consolidation, or for some other arrangement with respect thereto, consistent with K.S.A. 17-6405, and amendments thereto. Any of the terms of the agreement of merger or consolidation may be made dependent upon facts ascertainable outside of such agreement if the manner in which such facts shall operate upon the terms of the agreement is clearly and expressly set forth in the agreement of merger or consolidation. "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.

(c) Subject to subsection (d), the agreement shall be submitted to the members of each constituent corporation at an annual or special meeting thereof for the purpose of acting on the agreement. Due notice of the time, place and purpose of the meeting shall be given to each member of each such corporation who has the right to vote for the election of the members of the governing body of the corporation and to each other member who is entitled to vote on the merger under the articles of incorporation or bylaws of such corporation, at the member's postal address as it appears on the records of the corporation, at least 20 days prior to the date of the meeting. The notice shall contain a copy of the agreement or a brief summary thereof. At the meeting the agreement shall be considered and a vote, in person or by proxy,

taken for the adoption or rejection of the agreement. The following vote shall be required for the adoption of the agreement: (1) A majority of the members of each corporation entitled to vote for the election of the members of the governing body of the corporation and any other members entitled to vote on the merger under the articles of incorporation or bylaws of the corporation, except those corporations that are the subject of paragraph (2); or (2) in the case of a nonstock, nonprofit corporation, other than a nonprofit dental service corporation organized and operated under the nonprofit dental service corporation act, a majority of the members of each corporation entitled to vote for the election of the members of the governing body of the corporation and any other members entitled to vote on the merger under the articles of incorporation or bylaws of the corporation voting at the meeting. If the agreement is so adopted, that fact shall be certified on the agreement by the officer of each such corporation performing the duties ordinarily performed by the secretary or assistant secretary of a corporation, except that such certification on the agreement shall not be required if a certificate of merger or consolidation is filed in lieu of filing the agreement. If the agreement is adopted and certified by each constituent corporation in accordance with this section, it shall be executed and filed, and shall become effective, in accordance with K.S.A. 17-7908 through 17-7911, and amendments thereto. The provisions set forth in the last sentence of K.S.A. 17-6701(c), and amendments thereto, shall apply to a merger under this section, and the reference in such sentence to "stockholder" shall include "member" as used in this section.

(d) Notwithstanding subsection (b) or (c), if under the articles of incorporation or bylaws of any one or more of the constituent corporations, there shall be no members who have the right to vote for the election of the members of the governing body of the corporation, or for the merger, other than the members of the governing body themselves, no further action by the governing body or the members of such corporation shall be necessary if the resolution approving an agreement of merger or consolidation has been adopted by a majority of all the members of the governing body thereof, and that fact shall be certified on the agreement in the same manner as is provided in the case of the adoption of the agreement by the vote of the members of a corporation, except that such certification on the agreement shall not be required if a certificate of merger or consolidation is filed in lieu of filing the agreement, and thereafter the same procedure shall be followed to consummate the merger or consolidation.

(e) K.S.A. 17-6701(d), and amendments thereto, shall apply to a merger under this section, except that references to the board of directors, to stockholders, and to shares of a constituent corporation shall be deemed to be references to the governing body of the corporation, to members of the corporation, and to memberships or membership interests, as applicable, respectively.

(f) K.S.A. 17-6701(e), and amendments thereto, shall apply to a merger under this section.

(g) Nothing in this section shall be deemed to authorize the merger of a charitable nonstock corporation into a nonstock corporation if such charitable nonstock corporation would thereby have its charitable status lost or impaired, but a nonstock corporation may be merged into a charitable nonstock corporation that shall continue as the surviving corporation.

History: L. 1972, ch. 52, § 83; L. 1988, ch. 99, § 43; Revived and amended, L. 1988, ch. 100, § 43; L. 1992, ch. 177, § 1; L. 1993, ch. 163, § 6; L. 1998, ch. 189, § 17; L. 2000, ch. 39, § 32; L. 2004, ch. 143, § 53; L. 2016, ch. 110, § 72; L. 2023, ch. 66, § 32; July 1.