

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 corporation, which may be any one of the constituent corporations, or they may consolidate into a new 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) The governing body of each corporation which desires to merge or consolidate shall adopt a resolution approving an agreement of merger or consolidation. The agreement shall state: (1) The terms and conditions of the merger or consolidation; (2) the mode of carrying the same into effect; (3) such other provisions or facts required or permitted by this act to be stated in articles of incorporation for nonstock corporations as can be stated in the case of a merger or consolidation, stated in such altered form as the circumstances of the case require; (4) the manner, if any, of converting the memberships of each of the constituent corporations into memberships of the corporation surviving or resulting from the merger or consolidation, or of cancelling some or all of such memberships interests; and (5) such other details or provisions as are deemed desirable. Any of the terms of the agreement of merger or consolidation may be made dependent upon facts ascertainable outside of such agreement, provided that 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. The term "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) The agreement shall be submitted to the members of each constituent corporation who have the right to vote for the election of the members of the governing body of their 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 mailed to each member of each such corporation who has the right to vote for the election of the members of the governing body of such corporation, at the member's 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, as the governing body shall deem advisable. At the meeting the agreement shall be considered and a vote by ballot, in person or by proxy, taken for the adoption or rejection of the agreement, each member who has the right to vote for the election of the members of the governing body of such member's corporation being entitled to one vote. If a majority of the voting power of members of each such corporation who have the voting power above mentioned shall be for the adoption of the agreement or, 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, cited at K.S.A. 40-19a01 et seq., and amendments thereto, if a majority of the total number of members voting at an annual or special meeting for the purpose of acting on the agreement vote for the adoption of the agreement, then 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. The agreement so adopted and certified shall be executed and filed, and shall become effective, in accordance with K.S.A. 17-6003, and amendments thereto. The provisions set forth in the last sentence of subsection (c) of K.S.A. 17-6701, and amendments thereto, shall apply to a merger under this section, and the reference to "stockholder" shall be deemed to include "member" hereunder.

(d) If, under the provisions of the articles of incorporation 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 other than the members of that body themselves, the agreement duly entered into as provided in subsection (b) shall be submitted to the members of the governing body of such corporation or corporations, at a meeting of such corporation or corporations. Notice of the meeting shall be mailed to the members of the governing body in the same manner as is provided in the case of a meeting of the members of a corporation. If at the meeting 2/3 of the total number of members of the governing body shall vote by ballot, in person, for the adoption of the agreement, 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. The same procedure shall be followed to consummate the merger or consolidation.

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

(f) 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 which shall continue as the surviving corporation.

History: L. 1972, ch. 52, § 83; L. 1988, ch. 99, § 43; Revived and amend., 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; Jan. 1, 2005.