

## 2023 Kansas Statutes

**17-6706. Merger or consolidation of domestic and foreign nonstock corporations; service of process upon surviving or resulting corporation.** (a) Any one or more nonstock corporations of this state may merge or consolidate with one or more foreign nonstock corporations unless the laws of the jurisdiction or jurisdictions under which such foreign nonstock corporation or corporations are organized prohibit such merger or consolidation. The constituent corporations 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 formed by the consolidation, which may be a corporation of the jurisdiction of organization of any one of the constituent corporations, pursuant to an agreement of merger or consolidation, as the case may be, complying and approved in accordance with this section. As used in this subsection, "foreign nonstock corporation" means a corporation organized under the laws of any jurisdiction other than this state.

(b) All the constituent corporations shall enter into 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) in the case of a merger in which the surviving corporation is a domestic corporation, 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 in which the resulting corporation is a domestic corporation, that the articles of incorporation of the resulting corporation shall be as is 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;
  - (6) such other details or provisions as are deemed desirable, including, without limiting the generality of this subsection, 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; and
  - (7) such other provisions or facts as shall be required to be set forth in an agreement of merger or consolidation, including any provision for amendment of the articles of incorporation, or equivalent document, of a surviving foreign nonstock corporation by the laws of each jurisdiction under which any of the foreign nonstock corporations are organized. 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) The agreement shall be adopted, approved, certified and executed by each of the constituent corporations in accordance with the laws under which it is organized and, in the case of a domestic corporation, in the same manner as is provided in K.S.A. 17-

6705, and amendments thereto. The agreement shall be filed and shall become effective for all purposes of the laws of this state when and as provided in K.S.A. 17-6705, and amendments thereto, with respect to the merger of nonstock corporations of this state. Insofar as they may be applicable, the provisions set forth in the last sentence of K.S.A. 17-6702(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) If the corporation surviving or resulting from the merger or consolidation is a foreign nonstock corporation, it shall agree that it may be served with process in this state in any proceeding for enforcement of any obligation of any constituent domestic corporation of this state, as well as for enforcement of any obligation of the surviving or resulting corporation arising from the merger or consolidation and shall irrevocably appoint the secretary of state as its agent to accept service of process in any suit or other proceedings and shall specify the postal address to which a copy of such process shall be mailed by the secretary of state. Process may be served upon the secretary of state under this subsection by means of electronic transmission but only as prescribed by the secretary of state. The secretary of state is authorized to issue such rules and regulations with respect to such service as the secretary of state deems necessary or appropriate. In the event of such service upon the secretary of state in accordance with this subsection, the secretary of state shall immediately notify such surviving or resulting corporation thereof by letter, directed to such corporation at its address so specified, unless such surviving or resulting corporation shall have designated in writing to the secretary of state a different address for such purpose, in which case it shall be mailed to the last address so designated. Such letter shall be sent by a mail or courier service that includes a record of mailing or deposit with the courier and a record of delivery evidenced by the signature of the recipient. Such letter shall enclose a copy of the process and any other papers served upon the secretary of state. It shall be the duty of the plaintiff in the event of such service to serve process and any other papers in duplicate, to notify the secretary of state that service is being made pursuant to this subsection, and to pay the secretary of state the sum of \$50 for the use of the state. Such sum and any administrative fees shall be taxed as a part of the costs in the proceeding if the plaintiff prevails. The secretary of state shall maintain a record of any such service in a manner deemed appropriate by the secretary. The secretary of state shall not be required to retain such information for a period longer than five years from receipt of the service of process.

(e) K.S.A. 17-6701(e), and amendments thereto, shall apply to a merger under this section, if the corporation surviving the merger is a domestic corporation.

(f) 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.

(g) Nothing in this section shall be deemed to authorize the merger of a charitable nonstock corporation into a nonstock corporation, if the charitable status of such charitable nonstock corporation would thereby be 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, § 84; L. 1988, ch. 99, § 44; Revived and amended, L. 1988, ch. 100, § 44; L. 1992, ch. 270, § 19; L. 1993, ch. 163, § 7; L. 1999, ch. 39, § 14; L. 2000, ch. 39, § 33; L. 2004, ch. 143, § 54; L. 2016, ch. 110, § 73; L. 2023, ch. 66, § 33; July 1.