HOUSE BILL No. 2713

By Committee on Appropriations

3-2

Proposed Amendments for HB 2713
House Judiciary
March 16, 2016
Prepared by: Jason Thompson
Office of Revisor of Statutes

AN ACT concerning corporations; relating to the Kansas general corporation code; business entity standard treatment act; amending K.S.A. 17-1289, 17-2036, 17-2718, 17-4634, 17-6001, 17-6004, 17-6006, 17-6007, 17-6008, 17-6009, 17-6010, 17-6101, 17-6102, 17-6104, 17-6106, 17-6301, 17-6302, 17-6304, 17-6401, 17-6402, 17-6404, 17-6405, 17-6407, 17-6408, 17-6409, 17-6410, 17-6412, 17-6413, 17-6414, 17-6415, 17-6416, 17-6420, 17-6422, 17-6425, 17-6426, 17-6501, 17-6502, 17-6503, 17-6505, 17-6506, 17-6508, 17-6509, 17-6510, 17-6512, 17-6513, 17-6514, 17-6515, 17-6516, 17-6517, 17-6518, 17-6521, 17-6522, 17-6523, 17-6603, 17-6605, 17-6701, 17-6702, 17-6703, 17-6705, 17-6706, 17-6707, 17-6708, 17-6710, 17-6712, 17-6801, 17-6803, 17-6804, 17-6805, 17-6805a, 17-6807, 17-6808, 17-6809, 17-6810, 17-6811, 17-6812, 17-6813, 17-6902, 17-6903, 17-6904, 17-6905, 17-6906, 17-6907, 17-6908, 17-6909, 17-6910, 17-6911, 17-6913, 17-7001, 17-7003, 17-7101, 17-7102, 17-7201, 17-7203, 17-7204, 17-7205, 17-7206, 17-7208, 17-7209, 17-7211, 17-7212, 17-7213, 17-7215, 17-7302, 17-7305, 17-7307, 17-7404, 17-7503, 17-7504, 17-7505, 17-7510 and 17-7512 and K.S.A. 2015 Supp. 17-6002, 17-6305, 17-6601, 17-6602, 17-7002, 17-7207, 17-7506, 17-76,139, 17-7903, 17-7908, 17-7918, 17-7919, 17-7924, 17-7925, 17-7927, 17-7928, 17-7929, 17-7931, 17-7934, 56-1a606, 56-1a607, 56a-1201 and 56a-1202 and repealing the existing sections; also repealing 17-12,100, 17-12,101, 17-12,102, 17-12,103, 17-12,104 and 17-6704.

Be it enacted by the Legislature of the State of Kansas:

New Section 1. (a) Any civil action to interpret, apply, enforce or determine the validity of the provisions of the following may be brought in the district court, except to the extent that a statute confers exclusive jurisdiction on a court, agency or tribunal other than the district court:

(1) The articles of incorporation or the bylaws of a corporation;

(2) any instrument, document or agreement by which a corporation creates or sells, or offers to create or sell, any of its stock, or any rights or options respecting its stock;

(3) any written restrictions on the transfer, registration of transfer or ownership of securities under K.S.A. 17-6426, and amendments thereto;

board of directors, and the original subscribers for shares; and (2) such provisions contained in any amendment to the articles of incorporation as were necessary to effect a change, exchange, reclassification, subdivision, combination or cancellation of stock if such change, exchange, reclassification, subdivision, combination or cancellation has become effective. Any such omissions shall not be deemed a further amendment.

(d) Any restated articles of incorporation shall be executed and filed in accordance with K.S.A. ~~17-6003~~ *2015 Supp. 17-7908 through 17-7910, and amendments thereto, and upon such restated articles of incorporation becoming effective in accordance with K.S.A. 2015 Supp. 17-7911*, and amendments thereto. ~~Upon filing with the secretary of state,~~ The corporation's original articles of incorporation, as theretofore amended or supplemented, shall be superseded~~;~~ and ~~thenceforth~~ the restated articles *of incorporation*, including any further amendments or changes made thereby, shall be the articles of incorporation of the corporation, but the original date of incorporation shall remain unchanged.

(e) Any amendment or change effected in connection with the restatement and integration of the articles of incorporation shall be subject to any other ~~provisions~~ *provision* of this ~~act~~ *code*, not inconsistent with this section, which would apply if a separate certificate of amendment were filed to effect such amendment or change.

Sec. 69. K.S.A. 17-6701 is hereby amended to read as follows: 17-6701. (a) Any two or more corporations existing under the laws of this state ~~and authorized to issue capital stock~~ may merge into a single corporation, which may be any one of the constituent corporations or ~~they~~ may consolidate into a new corporation 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 board of directors of each corporation which desires to merge or consolidate shall adopt a resolution approving an agreement of merger or consolidation *and declaring its advisibility*. 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 amendments or changes may amend and restate the articles of incorporation of the surviving corporation in their 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 ~~is~~ *are* set forth in an attachment to the agreement; (5) the manner, if any, of converting the shares of each of the constituent corporations into shares or other securities of the corporation surviving or resulting from the merger or consolidation, or of cancelling some or all of such shares and, if any shares of any of the constituent corporations are not to remain outstanding, to be converted solely into shares or other securities of the surviving or resulting corporation or to be cancelled, the cash, property, rights or securities of any other corporation or entity which the holders of such shares are to receive in exchange for, or upon conversion of, such shares and the surrender of any certificates evidencing them, which cash, property, rights or securities of any other corporation or entity may be in addition to or in lieu of shares or other securities of the surviving or resulting corporation; and (6) such other details or provisions as are deemed desirable, including, without limiting~~,~~ the generality of the foregoing, a provision for the payment of cash in lieu of the issuance or recognition of fractional shares, interests or rights, or for any other arrangement with respect thereto, consistent with the provisions of K.S.A. 17-6405, and amendments thereto. The agreement *so* adopted ~~as provided in this subsection~~ shall be executed in accordance with K.S.A. ~~17-6003~~ *2015 Supp. 17-7908*, and amendments thereto. Any 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) (1) The agreement required by subsection (b) shall be submitted to the stockholders of each constituent corporation at an annual or special meeting ~~thereof~~ for the purpose of acting on the agreement.

(2) ~~The terms of the agreement may require that the agreement be submitted to the stockholders whether or not the board of directors determines at any time subsequent to declaring its advisability that the agreement is no longer advisable and recommends that the stockholders reject it.~~

~~(3)~~ Due notice of the time, place and purpose of the meeting shall be mailed to each holder of stock ~~of the corporation~~, whether voting or nonvoting, *of the corporation* at the stockholder'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 directors deem advisable~~.

~~(4)~~ *(3)* At the meeting the agreement shall be considered and a vote taken for its adoption or rejection. If a majority of the outstanding stock of the corporation entitled to vote thereon shall be voted for the adoption of the agreement, that fact shall be certified on the agreement by the secretary or assistant secretary of the 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~~ *shall be so* adopted and certified by each constituent corporation, it shall then be ~~executed and~~ filed, and shall become effective, in accordance with K.S.A. ~~17-6003~~ *2015 Supp. 17-7910 and 17-7911*, and amendments thereto.

~~(5)~~ *(4)* In lieu of filing the agreement of merger or consolidation *required by this section*, the surviving or resulting corporation may file a certificate of merger or consolidation, executed in accordance with K.S.A. ~~17-6003~~ *2015 Supp. 17-7908*, and amendments thereto, which states: (A) The name and state of incorporation of each of the constituent corporations; (B) that an agreement of merger or consolidation has been approved, adopted, certified and executed by each of the constituent corporations in accordance with this section; (C) the name of the surviving or resulting corporation; (D) 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 amendments or changes may amend and restate the articles of incorporation of the surviving corporation in their entirety*, or, if no such amendments or changes are desired, a statement that the articles of incorporation ~~of one of the constituent corporations~~ shall be the articles of incorporation of the surviving corporation; (E) in the case of a consolidation, that the articles of incorporation of the resulting corporation shall be as ~~is~~ *are* set forth in an attachment to the certificate; (F) that the executed agreement of consolidation or merger is on file at the principal place of business of the surviving or resulting corporation, stating the address thereof; and (G) that a copy of the agreement of consolidation or merger will be furnished by the surviving or resulting corporation, on request and without cost, to any stockholder of any constituent corporation.

(d) Any agreement of merger or consolidation may contain a provision that at any time prior to the time that the agreement, or *a* certificate in lieu thereof, filed with the secretary of state becomes effective in accordance with K.S.A. ~~17-6003~~ *2015 Supp. 17-7911*, and amendments thereto, the agreement may be terminated by the board of directors of any constituent corporation notwithstanding approval of the agreement by the stockholders of all or any of the constituent corporations; in the event the agreement of merger or consolidation is terminated after the filing of the agreement, or a certificate *in lieu thereof*, with the secretary of state but before the agreement, or *a* certificate *in lieu thereof*, has become effective, a certificate of termination of merger or consolidation shall be filed in accordance with K.S.A. ~~17-6003~~ *2015 Supp. 17-7910*, and amendments thereto. Any agreement of merger or consolidation may contain a provision that the boards of directors of the constituent corporations may amend the agreement at any time prior to the ~~filing of~~ *time that* the agreement, or a certificate in lieu thereof,~~ with the secretary of state~~ *filed with the secretary of state becomes effective in accordance with K.S.A. 2015 Supp. 17-7911, and amendments thereto,* except that an amendment made subsequent to the adoption of the agreement by the stockholders of any constituent corporation shall not: (1) Alter or change the amount or kind of shares, securities, cash, property or rights~~, or any combination,~~ to be received in exchange for or on conversion of all or any of the shares of any class or series thereof of such constituent corporation; (2) alter or change any term of the articles of incorporation of the surviving or resulting corporation to be effected by the merger or consolidation; or (3) alter or change any of the terms and conditions of the agreement if such alteration or change would adversely affect the holders of any class or series thereof of such constituent corporation. In the event the agreement of merger or consolidation is amended after the filing~~ of such merger or consolidation~~ *thereof* with the secretary of state but before the agreement has become effective, a certificate of~~ amendments~~ *amendment* of merger or consolidation shall be filed in accordance with K.S.A.~~ 17-6003~~ *2015 Supp 17-7910*, and amendments thereto.

(e) In the case of a merger, the articles of incorporation of the surviving corporation shall automatically be amended to the extent, if any, that changes in the articles of incorporation are set forth in the agreement of merger.

(f) (1) Notwithstanding the requirements of subsection (c), unless required by its articles of incorporation, no vote of stockholders of a constituent corporation surviving a merger shall be necessary to authorize a merger if: (A) The agreement of merger does not amend in any respect the articles of incorporation of such constituent corporation; (B) each share of stock of such constituent corporation outstanding immediately prior to the effective date of the merger is to be an identical outstanding or treasury share of the surviving corporation after the effective date of the merger; and (C) either no shares of common stock of the surviving corporation and no shares, securities or obligations convertible into such stock are to be issued or delivered under the plan of merger, or the authorized unissued shares or the treasury shares of common stock of the surviving corporation to be issued or delivered under the plan of merger plus those initially issuable upon conversion of any other shares, securities or obligations to be issued or delivered under such plan do not exceed 20% of the shares of common stock of such constituent corporation outstanding immediately prior to the effective date of the merger.

(2) No vote of stockholders of a constituent corporation shall be ... to authorize a merger or consolidation if no shares of the stock

of such corporation shall have been issued prior to the adoption by the board of directors of the resolution approving the agreement of merger or consolidation.

(3) If an agreement of merger is adopted by the constituent corporation surviving the merger, by action of its board of directors and without any vote of its stockholders pursuant to this subsection, the secretary or assistant secretary of that corporation shall certify on the agreement that the agreement has been adopted pursuant to this subsection and: (A) If it has been adopted pursuant to ~~the first sentence of this~~ subsection *(f)(1)*, that the conditions specified in that ~~sentence~~ *subsection* have been satisfied; or (B) if it has been adopted pursuant to ~~the second sentence of this~~ subsection *(f)(2)*, that no shares of stock of such corporation were issued prior to the adoption by the board of directors of the resolution approving the agreement of merger or consolidation.

~~(3)~~ *(4)* The agreement *so* adopted and certified shall then be executed and filed, and shall become effective, in accordance with K.S.A. ~~17-6003~~ *2015 Supp. 17-7908 through 17-7911*, and amendments thereto. Such filing shall constitute a representation by the person who executes the agreement that the facts stated in the certificate remain true immediately prior to such filing.

(g) Notwithstanding the requirements of subsection (c), unless expressly required by its articles of incorporation, no vote of stockholders of a constituent corporation shall be necessary to authorize a merger with or into a single direct or indirect wholly-owned subsidiary of such constituent corporation if:

(1) Such constituent corporation and the direct or indirect wholly-owned subsidiary of such constituent corporation are the only constituent entities to the merger;

(2) each share or fraction of a share of the capital stock of the constituent corporation outstanding immediately prior to the effective time of the merger is converted in the merger into a share or equal fraction of share of capital stock of a holding company having the same designations, rights, powers and preferences, and the qualifications, limitations and restrictions thereof, as the share of stock of the constituent corporation being converted in the merger;

(3) the holding company and the constituent ~~corporations~~ *corporation* are corporations of this state and the direct or indirect wholly-owned subsidiary that is the other constituent entity to the merger is a corporation or limited liability company of this state;

(4) the articles of incorporation and bylaws of the holding company immediately following the effective time of the merger contain provisions identical to the articles of incorporation and bylaws of the constituent corporation immediately prior to the effective time of the merger, other

than provisions, if any, regarding the incorporator or incorporators, the corporate name, the registered office and agent, the initial board of directors and the initial subscribers for shares and such provisions contained in any amendment to the articles of incorporation as were necessary to effect a change, exchange, reclassification, subdivision, combination or cancellation of stock, if such change, exchange, reclassification, subdivision, combination or cancellation has become effective;

(5) as a result of the merger the constituent corporation or its successor becomes or remains a direct or indirect wholly-owned subsidiary of the holding company;

(6) the directors of the constituent corporation become or remain the directors of the holding company upon the effective time of the merger; ~~and~~

(7) (A) the organizational documents of the surviving entity immediately following the effective time of the merger contain provisions identical to the articles of incorporation of the constituent corporation immediately prior to the effective time of the merger, other than provisions, if any, regarding the incorporator or incorporators, the corporate or entity name, the registered office and agent, the initial board of directors and the initial subscribers for shares, references to members rather than stockholders or shareholders, references to interests, units or the like rather than stock or shares, references to managers, managing members or other members of the governing body rather than directors and such provisions contained in any amendment to the articles of incorporation as were necessary to effect a change, exchange, reclassification, subdivision, combination or cancellation of stock, if such change, exchange, reclassification, subdivision, combination or cancellation has become effective~~.~~;

(B) if the organizational documents of the surviving entity do not contain the following provisions, such documents shall be amended in the merger to contain provisions requiring that: (i) Any act or transaction by or involving the surviving entity, other than the election or removal of directors or managers, managing members or other members of the governing body of the surviving entity, that requires for its adoption under this ~~act~~ *code* or its organizational documents the approval of the stockholders or members of the surviving entity shall, by specific reference to this subsection, require, in addition, the approval of the stockholders of the holding company, or any successor by merger, by the same vote as is required by this ~~act~~ *code* or by the organizational documents of the surviving entity, or both. For purposes of this clause, any surviving entity that is not a corporation shall include in such ~~amendments~~ *amendment* a requirement that the approval of the stockholders of the holding company be obtained for any act or transaction by or involving the surviving entity, other than the election or removal of directors or managers, managing members or other members of the governing body of the surviving entity, which would require the approval of the stockholders of the surviving entity if the surviving entity were a corporation subject to this ~~act~~ *code*;

(ii) any amendment of the organizational documents of a surviving entity that is not a corporation, which amendment would, if adopted by a corporation subject to this ~~act~~ *code*, be required to be included in the articles of incorporation of such corporation, shall, by specific reference to this subsection, require, in addition, the approval of the stockholders of the holding company, or any successor by merger, by the same vote as is required by this ~~act~~ *code* or by the organizational documents of the surviving entity or both; and

(iii) the business and affairs of a surviving entity that is not a corporation shall be managed by or under the direction of a board of directors, board of managers or other governing body consisting of individuals who are subject to the same fiduciary duties applicable to, and who are liable for breach of such duties to the same extent as, directors of a corporation subject to this ~~act. Neither the provisions of this subsection~~ *code; and*

(C) the organizational documents of the surviving entity may be amended in the merger to: (i) Reduce the number of classes and shares of capital stock or other equity interests or units that the surviving entity is authorized to issue; and (ii) eliminate any provision authorized by K.S.A. 17-6301(d), and amendments thereto; and

(8) the stockholders of the constituent corporation do not recognize gain or loss for United States federal income tax purposes as determined by the board of directors of the constituent corporation. Neither subsection (g)(7)(B) nor any provision of a surviving entity's organizational documents required by ~~this~~ subsection *(g)(7)(B)* shall be deemed or construed to require approval of the stockholders of the holding company to elect or remove directors or managers, managing members or other members of the governing body of the surviving entity.

~~(C) The organizational documents of the surviving entity may be amended in the merger to reduce the number of classes and shares of capital stock or other equity interests or units that the surviving entity is authorized to issue.~~

~~(D) As used in this subsection only,~~ The term "organizational documents," *as used in subsection (g)(7) and (g)(8),* when used in reference to a corporation, means the articles of incorporation of such corporation and, when used in reference to a limited liability company, means the articles of organization or operating agreement of such limited liability company~~;~~. Strike

~~(h)~~ *As used in this subsection,* the term "holding company" means a corporation which, from its incorporation until consummation of a merger governed by this subsection, was at all times a direct or indirect wholly-owned subsidiary of the constituent corporation and whose capital stock is issued in such merger. From and after the effective time of a merger adopted by a constituent corporation by action of its board of directors and without any vote of stockholders pursuant to this subsection: ~~(i)~~ *(1)* To the extent the restriction of ~~K.S.A. 17-12,100 et seq.~~ *section 7*, and amendments thereto, applied to the constituent corporation and its stockholders *at* the effective time of the merger, such restrictions shall apply to the holding company and its stockholders immediately after the effective time of the merger as though it were the constituent corporation, and all shares of stock of the holding company acquired in the merger shall for ~~the~~ purposes of ~~K.S.A. 17-12,100 et seq.~~ *section 7*, and amendments thereto, be deemed to have been acquired at the time that the shares of stock of the constituent corporation converted in the merger were acquired, and provided further that any stockholder who immediately prior to the effective time of the merger was not an interested stockholder within the meaning of ~~K.S.A. 17-12,100 et seq.~~ *section 7*, and amendments thereto, shall not solely by reason of the merger become an interested stockholder of the holding company~~; and (ii)~~ *(2)* if the corporate name of the holding company immediately following the effective time of the merger is the same as the corporate name of the constituent corporation immediately prior to the effective time of the merger, the shares of capital stock of the holding company into which the shares of capital stock of the constituent corporation are converted in the merger shall be represented by the stock certificates that previously represented shares of capital stock of the constituent corporation*;* and *(3)* to the extent a stockholder of the constituent corporation immediately prior to the merger had standing to institute or maintain derivative litigation on behalf of the constituent corporation, nothing in this section shall be deemed to limit or extinguish such standing. If an agreement of merger is adopted by a constituent corporation by action of its board of directors and without any vote of stockholders pursuant to this subsection, the secretary or assistant secretary of the constituent corporation shall certify on the agreement ~~or a certificate of merger~~ that the agreement has been adopted pursuant to this subsection and that the conditions specified in the first sentence of this subsection have been satisfied~~. The~~*, except that such certification on the* agreement ~~or~~ *shall not be required if a* certificate of merger *or consolidation is filled in lieu of filing the agreement. The agreement* so adopted and certified shall then be *executed,* filed and become effective, in accordance with K.S.A. ~~17-6003~~ *2015 Supp. 17-7908 through 17-7911*, and amendments thereto. Such filing shall constitute a representation by the person who executes the agreement~~ or certificate of merger~~ that the facts stated in the certificate remain true immediately prior to such filing. (h)

~~(i)~~ *(1) Notwithstanding the requirements of subsection (c), unless expressly required by its articles of incorporation, no vote of stockholders of a constituent corporation whose shares are listed on a national securities exchange or held of record by more than 2,000 holders immediately prior to the execution of the agreement of merger by such constituent corporation shall be necessary to authorize a merger if:*

(A) The agreement of merger expressly: (i) Permits or requires such merger to be effected under this subsection; and (ii) provides that such merger shall be effected as soon as practicable following the consummation of the offer referred to in subsection (i)(1)(B) if such merger is effected under this subsection;

(B) a corporation consummates a tender or exchange offer for any and all of the outstanding stock of such constituent corporation on the terms provided in such agreement of merger that, absent this subsection, would be entitled to vote on the adoption or rejection of the agreement of merger, except that such offer may exclude stock of such constituent corporation that is owned at the commencement of such offer by: (i) Such constituent corporation; (ii) the corporation making such offer; (iii) any person that owns, directly or indirectly, all of the outstanding stock of the corporation making such offer; or (iv) any direct or indirect wholly owned subsidiary of any of the foregoing;

(C) following the consummation of the offer referred to in subsection (i)(1)(B), the stock irrevocably accepted for purchase or exchange pursuant to such offer and received by the depository prior to expiration of such offer, plus the stock otherwise owned by the consummating corporation equals at least such percentage of the stock, and of each class or series thereof, of such constituent corporation that, absent this subsection, would be required to adopt the agreement of merger by this code and by the articles of incorporation of such constituent corporation;

(D) the corporation consummating the offer described in subsection (i)(1)(B) merges with or into such constituent corporation pursuant to such agreement; and

(E) each outstanding share of each class or series of stock of the constituent corporation that is the subject of and not irrevocably accepted for purchase or exchange in the offer referred to in subsection (i)(1)(B) is to be converted in such merger into, or into the right to receive, the same amount and kind of cash, property, rights or securities to be paid for shares of such class or series of stock of such constituent corporation irrevocably accepted for purchase or exchange in such offer.

(2) As used in this subsection, the term: (A) "Consummates," and

with correlative meaning, "consummation" and "consummating," means irrevocably accepts for purchase or exchange stock tendered pursuant to a tender or exchange offer; (B) "depository" means an agent, including a depository, appointed to facilitate consummation of the offer referred to in subsection (i)(1)(B); (C) "person" means any individual, corporation, partnership, limited liability company, unincorporated association or other entity; and (D) "received," solely for purposes of subsection (i)(1)(C), means physical receipt of a stock certificate in the case of certificated shares and transfer into the depository's account, or an agent's message being received by the depository, in the case of uncertificated shares.

(3) If an agreement of merger is adopted without the vote of stockholders of a corporation pursuant to this subsection, the secretary or assistant secretary of the surviving corporation shall certify on the agreement that the agreement has been adopted pursuant to this subsection and that the conditions specified in this subsection, other than the condition listed in subsection (i)(1)(D), have been satisfied, except that such certification on the agreement shall not be required if a certificate of merger is filed in lieu of filing the agreement. The agreement so adopted and certified shall then be executed and filed and shall become effective, in accordance with K.S.A. 2015 Supp. 17-7908 through 17-7911, and amendments thereto. Such filing shall constitute a representation by the person who executes the agreement that the facts stated in the certificate remain true immediately prior to such filing.

Sec. 70. K.S.A. 17-6702 is hereby amended to read as follows: 17-6702. (a) Any one or more corporations of this state may merge or consolidate with one or more other ~~stock~~ corporations of any other state or states of the United States, or of the District of Columbia if the laws of such other jurisdiction permit a corporation of such jurisdiction to merge or consolidate with a corporation of another jurisdiction. The constituent corporations may merge into a single corporation, which may be any one of the constituent corporations, or they may consolidate into a new corporation formed by the consolidation, which may be a corporation of the state of incorporation 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. In addition, any one or more corporations organized under the laws of any jurisdiction other than one of the United States may merge or consolidate with one or more corporations existing under the laws of this state, if the laws under which the other corporation or corporations are formed permit a corporation of such jurisdiction to merge or consolidate with a corporation of another jurisdiction.

(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) the manner, if any, of converting the shares of each of the constituent corporations into shares or other securities of the corporation surviving or resulting from the merger or consolidation, or of cancelling some or all of such shares, and, if any shares of any of the constituent corporations are not to remain outstanding, to be converted solely into shares or other securities of the surviving or resulting corporation or to be cancelled, the cash, property, rights or securities of any other corporation or entity which the holders of such shares are to receive in exchange for, or upon conversion of, such shares and the surrender of any certificates evidencing them, which cash, property, rights or securities of any other corporation may be in addition to or in lieu of the shares or other securities of the surviving or resulting corporation; (4) such other details or provisions as are deemed desirable, including, without limiting the generality of the foregoing, a provision for the payment of cash in lieu of the issuance or recognition of fractional shares of the surviving or resulting corporation or of any other corporation the securities of which are to be received in the merger or consolidation, or for some other arrangement with respect thereto consistent with the provisions of K.S.A. 17-6405, and amendments thereto; and (5) such other provisions or facts as shall be required to be set forth in articles of incorporation by the laws of the state which are stated in the agreement to be the laws that shall govern the surviving or resulting corporation and that can be stated in the case of a merger or consolidation. 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 adopted, approved, certified and executed by each of the constituent corporations in accordance with the laws under which it is formed, and, in the case of a Kansas corporation, in the same manner as provided in K.S.A. 17-6701, 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. 17-6701, and amendments thereto, with respect to the merger or consolidation of corporations of this state. In lieu of filing the agreement of merger or consolidation, the surviving or resulting corporation may file a certificate of merger or consolidation, executed in accordance with K.S.A. ~~17-6003~~ *2015 Supp. 17-7908*, and amendments thereto, which states: (1) The name and jurisdiction of incorporation of each of the constituents; (2) that an agreement of merger or consolidation has been approved, adopted, certified and executed by each of the constituent corporations in accordance with this section; (3) the name of the surviving or resulting corporation; (4) 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 amendments or changes may amend and restate the articles of incorporation of the surviving corporation in their 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; (5) in the case of a consolidation, that the articles of incorporation of the resulting corporation shall be as ~~is~~ *are* set forth in an attachment to the certificate; (6) that the executed agreement of consolidation or merger is on file at the principal place of business of the surviving or resulting corporation and the address thereof; (7) that a copy of the agreement of consolidation or merger will be furnished by the surviving or resulting corporation, on request and without cost, to any stockholder of any constituent corporation; (8) if the corporation surviving or resulting from the merger or consolidation is to be a corporation of this state, the authorized capital stock of each constituent corporation which is not a corporation of this state; and (9) the agreement, if any, required by subsection (d).

(d) If the corporation surviving or resulting from the merger or consolidation is to be governed by the laws of the District of Columbia or any state *or jurisdiction* other than this state, it shall agree that it may be served with process in this state in any proceeding for enforcement of any obligation of any constituent corporation of this state, as well as for enforcement of any obligation of the surviving or resulting corporation arising from the merger or consolidation, including any suit or other proceeding to enforce the right of any ~~stockholder~~ *stockholders* as determined in appraisal proceedings pursuant to ~~the provisions of~~ K.S.A. 17-6712, and amendments thereto~~. Such corporation~~, *and* shall irrevocably appoint the secretary of state as its agent to accept service of process in any such suit or other proceedings and shall specify the address to which a copy of such process shall be mailed by the secretary of state. ~~Service of such process shall be made by personally delivering to and leaving with the secretary of state duplicate copies of such process. The secretary of state shall forthwith send by registered mail one of such copies~~ *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 forthwith* *notify such surviving or resulting corporation thereof by letter, directed* to such surviving or resulting corporation at its address so specified, unless such surviving or resulting corporation shall ~~thereafter~~ 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 on the secretary of state pursuant to this subsection. 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 effected pursuant to this subsection and to pay the secretary of state the sum of $40 for the use of the state, which sum and any administrative fees shall be taxed as part of the costs of the proceeding, if the plaintiff shall prevail therein. 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 longer than five years from receipt of the service of process.*

(e) ~~The provisions of subsection (d) of~~ K.S.A. 17-6701*(d)*, and amendments thereto, shall apply to any merger or consolidation under this section; ~~the provisions of subsection (e) of~~ K.S.A. 17-6701*(e)*, and amendments thereto, shall apply to a merger under this section in which the surviving corporation is a corporation of this state; ~~the provisions of subsection (f) of~~ *and* K.S.A. 17-6701*(f) and ~~(i)~~*; and amendments thereto, shall apply to any merger under this section. (h)

Sec. 71. K.S.A. 17-6703 is hereby amended to read as follows: 17-6703. (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 which has in its articles of incorporation the provisions required by K.S.A. 17-6701(g)(7)(B), 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 another corporation and one of ~~such~~ *the* corporations is a corporation of this state and the other or others are corporations of this state, or ~~of~~ any other state or states, or ~~of~~ the District of Columbia and the laws of ~~such~~ *the* other state or states, or the District of Columbia permit a corporation of such jurisdiction to merge with a corporation of another jurisdiction, the corporation having such stock ownership may either merge ~~such~~ *the* other 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 corporations, into one of such other corporations by executing and filing, in accordance with K.S.A. ~~17-6003~~ *2015 Supp. 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, provided that the manner in which such facts shall operate upon the terms of the resolution is clearly and expressly set forth in the resolution. 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. If the parent corporation ~~is~~ *be* 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 ~~thereof~~ duly called and held after 20 days' notice of the purpose of the meeting mailed to each such stockholder at the stockholder's address as it appears on the records of the corporation, if the parent corporation is a corporation of this state, 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 not a corporation of this state. If the surviving corporation exists under the laws of the District of Columbia or any state *or jurisdiction* other than this state~~, the provisions of subsection (d) of~~*:*

(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.

(b) If the surviving corporation is a Kansas 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.

(c) ~~The provisions of subsection (d) of~~ K.S.A. 17-6701*(d)*, and amendments thereto, shall apply to a merger under this section, and ~~the provisions of subsection (e) of~~ 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 corporation of this state. References to "agreement of merger" in ~~subsections (d) and (e) of~~ K.S.A. 17-6701*(d) and (e)*, and amendments thereto, shall mean, for ~~the~~ purposes of this subsection ~~(e)~~, the resolution of merger adopted by the board of directors of the parent corporation. Any merger which 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 ~~or~~, 17-6702, *17-6707 or 17-6708*, and amendments thereto. ~~The provisions of~~ K.S.A. 17-6712, and amendments thereto, shall not apply to any merger effected under this section, except as provided in subsection (d).

(d) In the event all of the stock of a subsidiary Kansas 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 Kansas corporation party to the merger shall have appraisal rights as set forth in K.S.A. 17-6712, and amendments thereto.

(e) A merger may be effected under this section although one or more of the corporations ~~party~~ *parties* to the merger is a corporation organized under the laws of a jurisdiction other than one of the United States, if ~~: (1)~~ the laws of such jurisdiction permit a corporation of such jurisdiction to merge with a corporation of another jurisdiction ~~; and (2) the surviving corporation shall be a corporation of this state~~.

(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.

Sec. 72. K.S.A. 17-6705 is hereby amended to read as follows: 17-6705. (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) *Subject to subsection (d),* 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~~ *code* 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 *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

(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) *Subject to subsection (d),* 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 the corporation and to each other member who is entitled to vote on the merger under the articles of incorporation or the bylaws* 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~~. *The following vote shall be required for the* ~~*adption*~~ adoption *of the agreement: (1)* ~~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~~ *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 the 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, 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~~ *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 the 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~~. The agreement~~, *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 shall be* so 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. ~~17-6003~~ *2015 Supp. 17-7908 through 17-7911*, and amendments thereto. The provisions set forth in the last sentence of~~ subsection (c) of~~ K.S.A. 17-6701*(c)*, and amendments thereto, shall apply to a merger under this section, and the reference *therein* to "stockholder" shall be deemed to include "member" hereunder.

(d) *Notwithstanding subsection (b) or (c),* if~~,~~ under the~~ provisions of the~~ articles of incorporation *or the 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~~ 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 ⅔ of the total number of members of the governing body shall vote by ballot, in person, for the adoption of the agreement,~~ *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) ~~The provisions of subsection (c) of~~ 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 which shall continue as the surviving corporation.

Sec. 73. K.S.A. 17-6706 is hereby amended to read as follows: 17-6706. (a) Any one or more nonstock corporations of this state may merge or consolidate with one or more other nonstock corporations of any other state or states of the United States or of the District of Columbia~~,~~ if the laws of such other ~~jurisdiction~~ *state or states or of the District of Columbia* permit a corporation of such jurisdiction to merge with a corporation of another jurisdiction. The constituent corporations may merge into a single corporation, which may be any one of the constituent corporations, or they may consolidate into a new nonstock corporation formed by the consolidation, which may be a corporation of the state of incorporation 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. In addition, any one or more nonstock corporations organized under the laws of any jurisdiction other than one of the United States may merge or consolidate with one or more nonstock corporations of this state if the surviving or resulting corporation will be a corporation of this state, and if the laws under which the other corporation or corporations are formed permit a corporation of such jurisdiction to merge with a corporation of another jurisdiction.

(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) the manner, if any, of converting the memberships *or membership interests* of each of the constituent corporations into memberships *or*

receive process and the manner of serving the same in the event the surviving or new corporation is to be governed by the laws of any other state shall also apply to mergers or consolidations effected under ~~the provisions of~~ this section. ~~The provisions of subsection (e) of~~ K.S.A. 17-6701*(e)*, and amendments thereto, shall apply to mergers effected under ~~the provisions of~~ this section if the surviving corporation is a corporation of this state; ~~the provisions of subsection (d) of~~ K.S.A. 17-6701*(d)*, and amendments thereto, shall apply to any constituent ~~stock~~ corporation participating in a merger or consolidation under this section, *except that for purposes of a constituent nonstock corporation, references to the board of directors, to stockholders, and to shares shall be deemed to be references to the governing body of the corporation, to members of the corporation, and to memberships or membership interests of the corporation, as applicable, respectively*; and ~~the provisions of subsection (f) of~~ K.S.A. 17-6701*(f)*, and amendments thereto, shall apply to any constituent stock corporation participating in a merger under this section.

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

Sec. 76. K.S.A. 17-6710 is hereby amended to read as follows: 17-6710. When two or more corporations are merged or consolidated, the corporation surviving or resulting from the merger or consolidation may issue bonds or other obligations, negotiable or otherwise, and with or without coupons or interest certificates thereto attached, to an amount sufficient with its capital stock to provide for all the payments it will be required to make, or obligations it will be required to assume, in order to effect the merger or consolidation. For the purpose of securing the payment of any such bonds and obligations, it shall be lawful for the surviving or resulting corporation to mortgage its corporate franchise, rights, privileges and property, real, personal or mixed. The surviving or resulting corporation may issue ~~certificated or uncertificated shares~~ *certificates* of its capital stock *or uncertificated stock if authorized to do so* and other securities to the stockholders of the constituent corporations in exchange or payment for the original shares, in such amount as shall be necessary in accordance with the terms of the agreement of merger or consolidation in order to effect such merger or consolidation in the manner and on the terms specified in the agreement.

Sec. 77. K.S.A. 17-6712 is hereby amended to read as follows: 17-6712. (a) ~~When~~ *Any stockholder of a corporation of this state who holds shares of stock on the date of the making of a demand pursuant to subsection (d) with respect to such shares, who continuously holds such* *shares through the effective date of the merger or consolidation, who has otherwise complied with subsection (d) and who has neither voted in favor of the merger or consolidation nor consented thereto in writing pursuant to K.S.A. 17-6518, and amendments thereto, shall be entitled to an appraisal by the district court of the fair value of the stockholder's shares of stock under the circumstances described in subsections (b) and (c). As* used in this section, the word "stockholder" means a holder of record of stock in a~~ stock corporation and also a member of record of a nonstock~~ corporation; the words "stock" and "share" mean and include what is ordinarily meant by those words~~ and also membership or membership interest of a member of a nonstock corporation~~*; and the words "depository receipt" mean a receipt or other instrument issued by a depository representing an interest in one or more shares, or fractions thereof, solely of stock of a corporation, which stock is deposited with the depository.*

(b)~~ (1)~~ Appraisal rights shall be available for the shares of any class or series of stock of a constituent corporation in a merger or consolidation to be effected pursuant to K.S.A. 17-6701, and amendments thereto, other than a merger effected pursuant to~~ subsection (g) of~~ K.S.A. 17-6701*(g)*, and amendments thereto, *and, subject to subsection (b)(3), K.S.A. 17-7601*~~*(i)*~~, 17-6702, ~~17-6704,~~ *17-6705, 17-6706,* 17-6707~~;~~ *and* 17-6708~~ or 17-7703~~, and amendments thereto~~, except that~~:

(h)

~~(A)~~ *(1)* No appraisal rights under this section shall be available for the shares of any class or series of stock, which stock, or depository receipts in respect thereof, at the record date fixed to determine the stockholders entitled to receive notice of~~ and to vote at~~ the meeting of stockholders to act upon the agreement of merger or consolidation, were either*: (A)* Listed on a national securities exchange~~ or designated as a national market system security on an interdealer quotation system by the national association of securities dealers, inc.,~~*;* or *(B)* held of record by more than 2,000 holders~~; (B)~~, *except that* no appraisal rights shall be available for any shares of stock of the constituent corporation surviving a merger if the merger did not require for its approval the vote of the stockholders of the surviving corporation as provided in ~~subsection (f) of~~ K.S.A. 17-6701*(f)*, and amendments thereto.

(2) Notwithstanding~~ the provisions of subsections (b)(1)(A) and (b)(1)(B)~~ *subsection (b)(1)*, appraisal rights under this section shall be available for the shares of any class or series of stock of a constituent corporation if the holders thereof are required by the terms of an agreement of merger or consolidation pursuant to K.S.A. 17-6701, 17-6702,~~ 17-6704~~ *17-6705, 17-6706,* 17-6707~~;~~ *and* 17-6708~~ and 17-7703~~, and amendments thereto, to accept for such stock anything except:

(A) Shares of stock of the corporation surviving or resulting from such merger or consolidation, or depository receipts in respect~~ of such~~

~~shares of stock~~ *thereof*;

(B) shares of stock of any other corporation, or depository receipts in respect ~~of such shares of stock~~ *thereof*, which shares of stock, or depository receipts in respect ~~of such shares of stock~~ *thereof*, or depository receipts at the effective date of the merger or consolidation will be either listed on a national securities exchange ~~or designated as a national market system security on an interdealer quotation system by the national association of securities dealers, inc.~~ or held of record by more than 2,000 holders;

(C) cash in lieu of fractional shares or fractional depository receipts described in ~~the foregoing~~ subparagraphs (A) and (B); or

(D) any combination of the shares of stock, depository receipts and cash in lieu of fractional shares or fractional depository receipts described in ~~the foregoing~~ subparagraphs (A), (B) and (C).

(3) In the event all of the stock of a subsidiary Kansas corporation party to a merger effected under K.S.A. *17-6701*~~(i)~~ *or* 17-6703, and amendments thereto, is not owned by the parent ~~corporation~~ immediately prior to the merger, appraisal rights shall be available for the shares of the subsidiary Kansas corporation. (h)

(c) Any corporation may provide in its articles of incorporation that appraisal rights under this section shall be available for the shares of any class or series of its stock as a result of an amendment to its articles of incorporation, any merger or consolidation in which the corporation is a constituent corporation or the sale of all or substantially all of the assets of the corporation. If the articles of incorporation ~~contains~~ *contain* such a provision, the procedures of this section, including those set forth in subsections (d) and (e), shall apply as nearly as is practicable.

(d) Appraisal rights shall be perfected as follows:

(1) If a proposed merger or consolidation for which appraisal rights are provided under this section is to be submitted for approval at a meeting of stockholders, the corporation, not less than 20 days prior to the meeting, shall notify each of its stockholders who was such on the record date for *notice of* such meeting, *or such members who received notice in accordance with K.S.A. 17-6705, and amendments thereto,* with respect to shares for which appraisal rights are available pursuant to subsection (b) or (c) that appraisal rights are available for any or all of the shares of the constituent corporations, and shall include in such notice a copy of this section *and, if one of the constituent corporations is a nonstock corporation, a copy of section 4, and amendments thereto.* Each stockholder electing to demand the appraisal of such stockholder's shares shall deliver to the corporation, before the taking of the vote on the merger or consolidation, a written demand for appraisal of such stockholder's shares. Such demand will be sufficient if it reasonably informs the

corporation of the identity of the stockholder and that the stockholder intends thereby to demand the appraisal of such stockholder's shares. A proxy or vote against the merger or consolidation shall not constitute such a demand. A stockholder electing to take such action must do so by a separate written demand as herein provided. Within 10 days after the effective date of such merger or consolidation, the surviving or resulting corporation shall notify each stockholder of each constituent corporation who has complied with this subsection and has not voted in favor of or consented to the merger or consolidation of the date that the merger or consolidation has become effective; or

(2) If the merger or consolidation was approved pursuant to K.S.A. 17-6518, *17-6701~~(i)~~* or ~~K.S.A.~~ 17-6703, and amendments thereto, then, either a constituent corporation before the effective date of the merger or consolidation~~,~~ or the surviving or resulting corporation within 10 days thereafter~~,~~ shall notify each of the holders of any class or series of stock of such constituent corporation who are entitled to appraisal rights of the approval of the merger or consolidation and that appraisal rights are available for any or all shares of such class or series of stock of such constituent corporation, and shall include in such notice a copy of this section *and, if one of the constituent corporations is a nonstock corporation, a copy of section 4, and amendments thereto*. Such notice may, and, if given on or after the effective date of the merger or consolidation, shall, also notify such stockholders of the effective date of the merger or consolidation. Any stockholder entitled to appraisal rights may, within 20 days *after the date of mailing of such notice or, in the case of a merger approved pursuant to K.S.A. 17-6701~~(i)~~, and amendments thereto, within the later of the consummation of the tender or exchange offer contemplated by K.S.A. 17-6701~~(i)~~, and amendments thereto, and 20 days* after the date of mailing of such notice, demand in writing from the surviving or resulting corporation the appraisal of such holder's shares. Such demand will be sufficient if it reasonably informs the corporation of the identity of the stockholder and that the stockholder intends thereby to demand the appraisal of such holder's shares. If such notice did not notify stockholders of the effective date of the merger or consolidation, either: (A) Each such constituent corporation shall send a second notice before the effective date of the merger or consolidation notifying each of the holders of any class or series of stock of such constituent corporation that are entitled to appraisal rights of the effective date of the merger or consolidation; or (B) the surviving or resulting corporation shall send such a second notice to all such holders on or within 10 days after such effective date; provided, however, that if such second notice is sent more than 20 days following the sending of the first notice *or, in the case of a merger approved pursuant to K.S.A. 17-6701~~(i)~~, and amendments thereto, later*

(h)

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(h)

than the later of the consummation of the tender or exchange offer contemplated by K.S.A. 17-6701~~(i)~~*, and amendments thereto, and 20 days* (h) *following the sending of the first notice*, such second notice need only be sent to each stockholder who is entitled to appraisal rights and who has demanded appraisal of such holder's shares in accordance with this subsection. An affidavit of the secretary or assistant secretary or of the transfer agent of the corporation that is required to give either notice that such notice has been given shall, in the absence of fraud, be prima facie evidence of the facts stated therein. For purposes of determining the stockholders entitled to receive either notice, each constituent corporation may fix, in advance, a record date that shall be not more than 10 days prior to the date the notice is given, provided, that if the notice is given on or after the effective date of the merger or consolidation, the record date shall be such effective date. If no record date is fixed and the notice is given prior to the effective date, the record date shall be the close of business on the day next preceding the day on which the notice is given.

(e) Within 120 days after the effective date of the merger or consolidation, the surviving or resulting corporation or any stockholder who has complied with subsections (a) and (d) and who is otherwise entitled to appraisal rights, may ~~file~~ *commence an appraisal proceeding by filing* a petition in the district court demanding a determination of the value of the stock of all such stockholders. Notwithstanding the foregoing, at any time within 60 days after the effective date of the merger or consolidation, any stockholder *who has not commenced an appraisal proceeding or joined that proceeding as a named party* shall have the right to withdraw such stockholder's demand for appraisal and to accept the terms offered upon the merger or consolidation. Within 120 days after the effective date of the merger or consolidation, any stockholder who has complied with the requirements of ~~subsection~~ *subsections* (a) and (d), upon written request, shall be entitled to receive from the corporation surviving the merger or resulting from the consolidation a statement setting forth the aggregate number of shares not voted in favor of the merger or consolidation and with respect to which demands for appraisal have been received and the aggregate number of holders of such shares. Such written statement shall be mailed to the stockholder within 10 days after such stockholder's written request for such a statement is received by the surviving or resulting corporation or within 10 days after expiration of the period for delivery of demands for appraisal under subsection (d), whichever is later. *Notwithstanding subsection (a), a person who is the beneficial owner of shares of such stock held either in a voting trust or by a nominee on behalf of such person may, in such person's own name, file a petition or request from the corporation the statement described in this subsection.*

~~17-6003~~ *2015 Supp. 17-7911*, and amendments thereto, shall thereupon become effective in accordance with its terms and the provisions of ~~the instrument as provided in~~ this subsection. Such certificate, agreement of merger or other instrument shall be made and executed, as may be directed by such decrees or orders, by the trustee or trustees appointed *or elected* in the ~~reorganization~~ *bankruptcy* proceedings, or a majority thereof, or, if none be appointed *or elected* and acting, by the officers of the corporation, or by ~~a master or other~~ representative appointed by the court, and shall certify that provision for the making of such certificate, agreement or instrument is contained in a decree or order of a court having jurisdiction of a proceeding under ~~such applicable statute of the United States for the reorganization of such corporation~~ *the federal bankruptcy reform act of 1978 (11 U.S.C. §§ 101 et seq.)*.

(d) The provisions of this section shall cease to apply to such corporation upon the entry of a final decree in the ~~reorganization~~ *bankruptcy* proceedings closing the case and discharging the trustee or trustees, if any, *will not affect the validity of any act previously performed pursuant to subsections (a) through (c)*.

(e) On filing any certificate, agreement, report or other paper made or executed pursuant to the provisions of this section, there shall be paid to the secretary of state for the use of the state the same fees as are payable by corporations not in ~~reorganization~~ *bankruptcy* upon the filing of like certificates, agreements, reports or other papers.

Sec. 101. K.S.A. 17-7001 is hereby amended to read as follows: 17-7001. (a) At any time prior to the expiration of three years following the dissolution of a corporation pursuant to K.S.A. 17-6804, and amendments thereto, or, at any time prior to the expiration of such longer period as the court may have directed pursuant to K.S.A. 17-6807, and amendments thereto, a corporation may revoke the dissolution theretofore effected by it in the following manner:

(1) *For purposes of this section, the term "stockholders" shall mean the stockholders of record on the date the dissolution became effective.*

(2) The board of directors shall adopt a resolution recommending that the dissolution be revoked and directing that the question of the revocation be submitted to a vote at a special meeting of stockholders.

~~(2)~~ *(3)* Notice of the special meeting of stockholders shall be given in accordance with K.S.A. 17-6512, and amendments thereto, to each ~~stockholder whose shares were entitled to vote upon a proposed dissolution before the corporation was dissolved~~ *of the stockholders*.

~~(3)~~ *(4)* At the meeting, a vote of the stockholders shall be taken on ~~the~~ *a* resolution to revoke the dissolution. If a majority of the stock of the corporation which was outstanding and entitled to vote upon a dissolution at the time of its dissolution shall be voted for the resolution, a certificate of revocation of dissolution shall be executed in accordance with K.S.A. ~~17-6003~~ *2015 Supp. 17-7908 through 17-7910*, and amendments thereto, which shall state:

~~(i)~~ *(A)* The name of the corporation;

(B) the address of the corporation's registered office in this state, which shall be stated in accordance with K.S.A. 2015 Supp. 17-7924, and amendments thereto, and the name of its resident agreement at such address; (c)

~~(ii)~~ *(C)* the names and respective addresses of its officers;

~~(iii)~~ *(D)* the names and respective addresses of its directors; and

~~(iv)~~ *(E)* that a majority of the stock of the corporation which was outstanding and entitled to vote upon a dissolution at the time of its dissolution have voted in favor of a resolution to revoke the dissolution, *or that, if applicable, in lieu of a meeting and vote of stockholders, the stockholders have given their written consent to the revocation in accordance with K.S.A. 17-6518, and amendments thereto.*

(b) Upon the filing *in the office of the secretary of state* of the certificate of revocation of dissolution ~~in the office of the secretary of state~~, the revocation of the dissolution shall become effective and the corporation may again carry on its business.

(c) ~~If, after the dissolution of any such corporation became effective, any other corporation organized under the laws of this state shall have adopted the same name as such corporation, or shall have adopted a name so nearly similar thereto as not to distinguish it from such corporation, or any foreign corporation shall have qualified to do business in this state under the same name as such corporation or under a name so nearly similar thereto as not to distinguish it from such corporation, then such corporation shall not be reinstated under the same name which it bore when its dissolution became effective. In such case, it shall adopt and be reinstated under some other name, and the certificate to be filed under the provisions of this section shall set forth the name borne by such corporation at the time its dissolution became effective and the new name under which it is to be reinstated.~~

~~(d)~~ Upon the filing of the certificate with the secretary of state to which subsection (b) refers, the provisions of ~~subsection (d) of~~ K.S.A. 17-6501*(c)*, and amendments thereto, shall govern, and the period of time the corporation was in dissolution shall be included within the calculation of the 30-day and 13-month periods to which ~~subsection (d) of~~ K.S.A. 17-6501*(c)*, and amendments thereto, refers. An election of directors, however, may be held at the special meeting of stockholders to which subsection (a) refers, and~~,~~ in that event, that meeting of stockholders shall be deemed an annual meeting of stockholders for purposes of ~~subsection (d) of~~ K.S.A. 17-6501*(c)*, and amendments thereto.

(d) If, after the dissolution became effective, any other entity identified in K.S.A. 2015 Supp. 17-7918, and amendments thereto, shall have adopted the same name as the corporation, or shall have adopted a name so nearly similar thereto as not to distinguish it from the corporation, or any foreign covered entity shall have qualified to do business in this state under the same name as the corporation or under a name so nearly similar thereto as not to distinguish it from the corporation, then, in such case, the corporation shall not be reinstated under the same name which it bore when its dissolution became effective, but shall adopt and be reinstated under some other name, and in such case the certificate to be filed under this section shall set forth the name borne by the corporation at the time its dissolution became effective and the new name under which the corporation is to be reinstated.

(e) Nothing in this section shall be construed to affect the jurisdiction or power of the district court under K.S.A. 17-6808 and 17-6809, and amendments thereto.

(f) At any time prior to the expiration of three years following the dissolution of a nonstock corporation pursuant to K.S.A. 17-6805, and amendments thereto, or, at any time prior to the expiration of such longer period as the district court may have directed pursuant to K.S.A. 17-6807, and amendments thereto, a nonstock corporation may revoke the dissolution effected by it in a manner analogous to that by which the dissolution was authorized, including: (1) If applicable, a vote of the members entitled to vote, if any, on the dissolution; and (2) the filing of a certificate of revocation of dissolution containing information comparable to that required by subsection (a)(4). Notwithstanding the foregoing, only subsections (b), (d) and (e) shall apply to nonstock corporations.

Sec. 102. K.S.A. 2015 Supp. 17-7002 is hereby amended to read as follows: 17-7002. (a) *As used in this section, the term: (1) "Articles of incorporation" includes the articles of incorporation of a corporation organized under any special act or any law of this state; and (2) "authority to engage in business" includes the registration of any foreign corporation under K.S.A. 2015 Supp. 17-7931, and amendments thereto.*

(b) Any corporation may ~~procure an extension, renewal or reinstatement~~, *at any time before the expiration of the time limited for its existence and any corporation whose articles of incorporation or authority to engage in business has become forfeited or void pursuant to this code and any corporation whose articles of incorporation or authority to engage in business has expired by reason of failure to renew it or whose articles of incorporation or authority to engage in business has been renewed, but, through failure to comply strictly with the provisions of this code, the validity of whose renewal has been brought into question, at any time procure an extension, renewal or reinstatement* of its articles of

incorporation, if a domestic corporation, or its authority to engage in business, if a foreign corporation, together with all the rights, franchises, privileges and immunities and subject to all of its duties, debts and liabilities which had been secured or imposed by its original articles of incorporation, and all amendments thereto, or by its authority to engage in business, as the case may be~~, and may designate a new registered office and resident agent in the following instances:~~

~~(1) At any time before the expiration of the time limited for the corporation's existence;~~

~~(2) at any time, where the corporation's articles of incorporation, if a domestic corporation, or the authority to engage in business, if a foreign corporation, has become inoperative by law for nonpayment of taxes or fees, or failure to file its annual report;~~

~~(3) at any time, where the articles of incorporation of a domestic corporation or the authority to engage in business of a foreign corporation has expired by reason of failure to renew it;~~

~~(4) at any time, where the articles of incorporation of a domestic corporation or the authority to engage in business of a foreign corporation has been renewed, but through failure to comply strictly with the provisions of this act, the validity of such renewal has been brought into question; and~~

~~(5) at any time, where the articles of incorporation of a domestic corporation or the authority to engage in business of a foreign corporation has been forfeited pursuant to K.S.A. 2015 Supp. 17-7929 or 17-7934, and amendments thereto~~ *by complying with the requirements of this section.*

~~(b)~~ *(c)* The extension, renewal or reinstatement of the articles of incorporation or authority to engage in business may be procured by executing and filing a certificate in accordance with K.S.A. 2015 Supp. *17-7908 through* 17-7910, and amendments thereto.

~~(c)~~ *(d)* The certificate required by subsection ~~(b)~~ *(c)* shall state:

(1) The name of the corporation, which shall be the existing name of the corporation or the name it bore when its articles of incorporation or authority to engage in business expired, except as provided in subsection ~~(e)~~ *(f) and the date of filing of its original articles of incorporation with the secretary of state*;

(2) ~~if a new registered office and resident agent is designated,~~ the address of the corporation's registered office in this state, which shall ~~include the street, city and zip code~~ *be stated in accordance with K.S.A. 2015 Supp. 17-7924, and amendments thereto,* and the name of its resident agent at such address; (c)

(3) whether or not the renewal, or reinstatement is to be perpetual and, if not perpetual, the time for which the renewal or reinstatement is to continue~~;~~ and, in case of renewal before the expiration of the time limited