

## 2021 Kansas Statutes

**17-72a03. Amendments and mergers; votes required; appraisal rights.** (a) Notwithstanding any other provisions of the Kansas general corporation code, a corporation that is not a public benefit corporation, may not, without the approval of 2/3 of the outstanding stock of the corporation entitled to vote thereon:

- (1) Amend its articles of incorporation to include a provision authorized by K.S.A. 2021 Supp. 17-72a02(a)(1), and amendments thereto; or
- (2) merge or consolidate with or into another entity if, as a result of such merger or consolidation, the shares in such corporation would become, or be converted into or exchanged for the right to receive, shares or other equity interests in a domestic or foreign public benefit corporation or similar entity.

The restrictions of this section shall not apply prior to the time that the corporation has received payment for any of its capital stock.

(b) Except as provided in subsection (e), any stockholder of a corporation that is not a public benefit corporation shall be entitled to an appraisal by the district court of the fair value of the stockholder's shares of stock if such stockholder:

- (1) Holds shares of stock of such corporation immediately prior to the effective time of:
  - (A) An amendment to the corporation's articles of incorporation to include a provision authorized by K.S.A. 2021 Supp. 17-72a02(a)(1), and amendments thereto; or
  - (B) a merger or consolidation that would result in the conversion of the corporation's stock into or exchange of the corporation's stock for the right to receive shares or other equity interests in a domestic or foreign public benefit corporation or similar entity; and
- (2) has neither voted in favor of such amendment or such merger or consolidation nor consented thereto in writing pursuant to K.S.A. 17-6518, and amendments thereto.

(c) Notwithstanding any other provisions of the Kansas general corporation code, a corporation that is a public benefit corporation may not, without the approval of 2/3 of the outstanding stock of the corporation entitled to vote thereon:

- (1) Amend its articles of incorporation to delete or amend a provision authorized by K.S.A. 2021 Supp. 17-72a02(a)(1) or 17-72a06(f), and amendments thereto; or
- (2) merge or consolidate with or into another entity if, as a result of such merger or consolidation, the shares in such corporation would become, or be converted into or exchanged for the right to receive, shares or other equity interests in a domestic or foreign corporation that is not a public benefit corporation or similar entity and the articles of incorporation, or similar governing instrument, of which does not contain the identical provisions identifying the public benefit or public benefits pursuant to K.S.A. 2021 Supp. 17-72a02(a)(1), and amendments thereto, or imposing requirements pursuant to K.S.A. 2021 Supp. 17-72a06(f), and amendments thereto.

(d) Except as provided in subsection (e), any stockholder of a corporation that is a public benefit corporation shall be entitled to an appraisal by the district court of the fair value of the stockholder's shares of stock if such stockholder:

- (1) Holds shares of stock of such corporation immediately prior to the effective time of:
  - (A) An amendment to the corporation's articles of incorporation to remove a provision authorized by K.S.A. 2021 Supp. 17-72a02(a)(1), and amendments thereto; or
  - (B) a merger or consolidation that would result in the conversion of the corporation's stock into or exchange of the corporation's stock for the right to receive shares or other equity interests in a domestic or foreign entity other than a public benefit corporation or similar entity; and
- (2) has neither voted in favor of such amendment or such merger or consolidation nor

consented thereto in writing pursuant to K.S.A. 17-6518, and amendments thereto.

(e) 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 the meeting of stockholders to act upon the agreement of merger or consolidation or amendment, were either: (1) Listed on a national securities exchange; or (2) held of record by more than 2,000 holders, unless, in the case of a merger or consolidation, the holders thereof are required by the terms of an agreement of merger or consolidation to accept for such stock anything except: (A) Shares of stock of any other corporation, or depository receipts in respect thereof, which shares of stock, or depository receipts in respect thereof, or depository receipts at the effective date of the merger or consolidation will be either listed on a national securities exchange or held of record by more than 2,000 holders; (B) cash in lieu of fractional shares or fractional depository receipts described in subparagraph (A); or (C) any combination of the shares of stock, depository receipts and cash in lieu of fractional shares or fractional depository receipts described in subparagraphs (A) and (B).

**History:** L. 2017, ch. 71, § 3; July 1.