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TITLE 1. CORPORATIONS [100 - 14631]

(Title 1 enacted by Stats. 1947, Ch. 1038.)

DIVISION 2. NONPROFIT CORPORATION LAW [5000 - 10841]

(Heading of Division 2 amended by Stats. 1978, Ch. 567.)

PART 2. NONPROFIT PUBLIC BENEFIT CORPORATIONS [5110 - 6910]

(Part 2 added by Stats. 1978, Ch. 567.)

CHAPTER 10. Mergers [6010 - 6022]

(Chapter 10 added by Stats. 1978, Ch. 567.)

ARTICLE 1. Merger [6010 - 6019.1]

(Article 1 added by Stats. 1978, Ch. 567.)

6010.

(a) A public benefit corporation may merge with any domestic corporation, foreign corporation (Section 171), or other business entity (Section 5063.5). However, without the prior written consent of the Attorney General, a public benefit corporation may only merge with another public benefit

GENE HAZZARD

Don't Be Envious of Evil Men

1 Do not be envious of evil men, Nor desire to be with them; 2 For their minds devise violence, And their lips talk of trouble....

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corporation or a religious corporation or a foreign nonprofit corporation or an unincorporated association the governing documents of which provide that its assets are irrevocably dedicated to charitable, religious, or public purposes. In addition, a public benefit corporation that is exempt from the supervisory authority of the Attorney General pursuant to Sections 12581 and 12583 of the Government Code by virtue of being a committee, as defined in Section 82013 of the Government Code, that is required to and does file any statement pursuant to the provisions of Article 2 (commencing with Section 84200) of Chapter 4 of Title 9 of the Government Code, may merge with another public benefit corporation similarly exempt without having to obtain the Attorney General's consent.

(b) At least 20 days prior to consummation of any merger allowed by subdivision (a), the Attorney General must be provided with a copy of the proposed agreement of merger.

(c) Without the prior written consent of the Attorney General, when a merger occurs pursuant to subdivision (a), each member of a constituent corporation may only receive or keep a membership in the surviving corporation for or as a result of the member's membership in the constituent corporation.

(Amended by Stats. 2011, Ch. 442, Sec. 8. (AB 1211) Effective January 1, 2012.)

6011.

The board of each corporation which desires to merge shall approve an agreement of merger. The constituent corporations shall be parties to the agreement of merger and other persons may be parties to the agreement of merger. The agreement shall state:

(a) The terms and conditions of the merger;

(b) The amendments, subject to Sections 5810 and 5816, to the articles of the surviving corporation to be effected by the

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merger, if any; if any amendment changes the name of the surviving corporation, the new name may be the same as or similar to the name of a disappearing corporation, subject to subdivision (b) of Section 5122;

(c) The amendments to the bylaws of the surviving corporation to be effected by the merger, if any;

(d) The name and place of incorporation of each constituent corporation and which of the constituent corporations is the surviving corporation;

(e) The manner, if any, of converting memberships of the constituent corporations into memberships of the surviving corporation; and

(f) Such other details or provisions as are desired, if any.

(Amended by Stats. 1979, Ch. 724.)

6012.

The principal terms of the merger shall be approved by the members (Section 5034) of each constituent corporation and by each other person or persons whose approval of an amendment of articles is required by the articles; and the approval by the members (Section 5034) or such other person or persons required by this section may be given before or after the approval by the board.

(Amended by Stats. 1981, Ch. 587, Sec. 20.)

6013.

Each constituent corporation shall sign the agreement by the chairman of its board, president or a vice president and secretary or an assistant secretary acting on behalf of their respective corporations.

(Added by Stats. 1978, Ch. 567.)

6014.

After approval of a merger by the board and any approval by the members (Section 5034) or other person or persons

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required by Section 6012, the surviving corporation shall file a copy of the agreement of merger with an officers' certificate of each constituent corporation attached stating the total number of memberships of each class entitled to vote on the merger, identifying any other person or persons whose approval is required, and stating that the principal terms of the agreement in the form attached were duly approved by the required vote of the members and (if applicable) such other person or persons. The merger and any amendment of the articles of the surviving corporation contained in the merger agreement shall thereupon be effective (subject to subdivision (c) of Section 5008 and subject to the provisions of Section 6018) and the several parties thereto shall be one surviving corporation. The Secretary of State may certify a copy of the merger agreement separate from the officers' certificates attached thereto.

(Amended by Stats. 2006, Ch. 773, Sec. 15. Effective September 29, 2006.)

6015.

(a) Any amendment to the agreement may be adopted and the agreement so amended may be approved by the board and, if it changes any of the principal terms of the agreement, by the members (Section 5034) or other person or persons, as required by Section 6012, of any constituent corporation in the same manner as the original agreement.

(b) If the agreement so amended is approved as provided in subdivision (a), the agreement so amended shall then constitute the agreement of merger.

(Amended by Stats. 1981, Ch. 587, Sec. 21.)

6016.

The board may, in its discretion, abandon a merger, subject to the contractual rights, if any, of third parties, including other constituent corporations, without further approval by the

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members (Section 5034) or other persons entitled to approve the merger at any time before the merger is effective.

(Added by Stats. 1978, Ch. 567.)

6017.

A copy of an agreement of merger certified on or after the effective date by an official having custody thereof has the same force in evidence as the original and, except as against the state, is conclusive evidence of the performance of all conditions precedent to the merger, the existence on the effective date of the surviving corporation and the performance of the conditions necessary to the adoption of any amendment to the articles contained in the agreement of merger.

(Added by Stats. 1978, Ch. 567.)

6018.

(a) Subject to the provisions of Section 6010, the merger of any number of corporations with any number of foreign corporations may be effected if the foreign corporations are authorized by the laws under which they are formed to effect the merger. The surviving corporation may be any one of the constituent corporations and shall continue to exist under the laws of the state or place of its incorporation.

(b) If the surviving corporation is a public benefit corporation or a religious corporation, the merger proceedings with respect to that corporation and any disappearing corporation shall conform to the provisions of this chapter governing the merger of corporations, but if the surviving corporation is a foreign corporation, then, subject to the requirements of subdivision (d) and Section 6012, the merger proceedings may be in accordance with the laws of the state or place of incorporation of the surviving corporation.

(c) If the surviving corporation is a public benefit corporation or a religious corporation, the agreement and the officers'



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CORPORATIONS CODE - CORP

TITLE 1. CORPORATIONS [100 - 14631] (Title 1 enacted by Stats. 1947, Ch. 1038.)

DIVISION 2. NONPROFIT CORPORATION LAW [5000 - 10841] (Heading of Division 2 amended by Stats. 1978, Ch. 567.)

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PART 3. NONPROFIT MUTUAL BENEFIT CORPORATIONS [7110 - 8910] (Part 3 added by Stats. 1978, Ch. 567.)

CHAPTER 10. Mergers [8010 - 8022] (Chapter 10 added by Stats. 1978, Ch. 567.)

ARTICLE 1. Merger [8010 - 8019.1] (Article 1 added by Stats. 1978, Ch. 567.)

8010. A mutual benefit corporation may merge with any domestic corporation, foreign corporation, foreign business corporation, or other business entity (Section 5063.5). However, a merger with a public benefit corporation, or a religious corporation, or an unincorporated association, the governing documents of which provide that its assets are irrevocably dedicated to charitable, religious, or public purposes, must have the prior written consent of the Attorney General.

(Amended by Stats. 2011, Ch. 442, Sec. 18. (AB 1211) Effective January 1, 2012.)

8011. The board of each corporation that desires to merge shall approve an agreement of merger. The constituent corporations shall be parties to the agreement of merger and other persons may be parties to the agreement of merger. The agreement shall state all of the following:

(a) The terms and conditions of the merger.

(b) The amendments, subject to Sections 7810 and 7816, to the articles of the surviving corporation to be effected by the merger, if any; if any amendment changes the name of the surviving corporation, the new name may be the same as or similar to the name of a disappearing corporation, subject to subdivision (c) of Section 7122.

(c) The amendments to the bylaws of the surviving corporation to be effected by the merger, if any.

(d) The name and place of incorporation of each constituent corporation and which of the constituent corporations is the surviving corporation.

(e) The manner, if any, of converting memberships or securities of the constituent corporations into memberships or securities of the surviving corporation and, if any memberships or securities of any of the constituent corporations are not to be converted solely into memberships or securities of the surviving corporation, the cash, property, rights or securities of any corporation that the holders of those memberships or securities are to receive in exchange for the memberships or securities, which cash, property, rights or securities of any corporation may be in addition to or in lieu of memberships or securities of the surviving corporation, or that the memberships are to be canceled without consideration.

(f) Other details or provisions as are desired, if any, including, without limitation, if not prohibited by this chapter, a provision for the payment of cash in lieu of fractional memberships or for any other arrangement with respect thereto.

(Amended by Stats. 1999, Ch. 453, Sec. 14. Effective January 1, 2000.)

8011.5. Each membership of the same class of any constituent corporation (other than the cancellation of memberships held by a surviving corporation or its parent or a wholly owned subsidiary of either in a constituent corporation) shall be treated equally with respect to any distribution of cash, property, rights or securities unless: (i) all members of the class consent or (ii) the Commissioner of Corporations has approved the terms and conditions of the transaction and the fairness of such terms pursuant to Section 25142.

(Added by Stats. 1979, Ch. 724.)

8012. The principal terms of the merger shall be approved by the members (Section 5034) of each class of each constituent corporation and by each other person or persons whose approval of an amendment of articles is required by the articles; and the approval by the members (Section 5034) or such other person or persons required by this section may be given before or after the approval by the board.

(Amended by Stats. 1981, Ch. 587, Sec. 41.)

8013. Each constituent corporation shall sign the agreement by the chairman of its board, president or a vice president and secretary or an assistant secretary acting on behalf of their respective corporations.

(Added by Stats. 1978, Ch. 567.)

8014. After approval of a merger by the board and any approval by the members (Section 5034) required by Section 8012, the surviving corporation shall file a copy of the agreement of merger with an officers' certificate of each constituent corporation attached stating the total number of memberships of each class entitled to vote on the merger, identifying any other person or persons whose approval is required, and that the principal terms of the agreement in the form attached were duly approved by the required vote of the members and, if applicable, any other person or persons. The merger and any amendment of the articles of the surviving corporation contained in the merger agreement shall thereupon be effective (subject to subdivision (c) of Section 5008 and subject to the provisions of Section 8018) and the several parties thereto shall be one corporation. The Secretary of State may certify a copy of the merger agreement separate from the officers' certificates attached thereto.

(Amended by Stats. 2006, Ch. 773, Sec. 22. Effective September 29, 2006.)

8015. (a) Any amendment to the agreement may be adopted and the agreement so amended may be approved by the board and, if it changes any of the principal terms of the agreement, by the members (Section 5034) or other person or persons, as required by Section 8012, of any constituent corporation in the same manner as the original agreement.

(b) If the agreement so amended is approved as provided in subdivision (a), the agreement so amended shall then constitute the agreement of merger.

(Amended by Stats. 1981, Ch. 587, Sec. 42.)

8016. The board may, in its discretion, abandon a merger, subject to the contractual rights, if any, of third parties, including other constituent corporations, without further approval by the members (Section 5034) or other persons entitled to approve the merger at any time before the merger is effective.

(Amended by Stats. 1982, Ch. 662, Sec. 18.)

8017. A copy of an agreement of merger certified on or after the effective date by an official having custody thereof has the same force in evidence as the original and, except as against the state, is conclusive evidence of the performance of all conditions precedent to the merger, the existence on the effective date of the surviving corporation and the performance of the conditions necessary to the adoption of any amendment to the articles contained in the agreement of merger.

(Added by Stats. 1978, Ch. 567.)

8018. (a) Subject to the provisions of Section 8010, the merger of any number of corporations with any number of foreign corporations, foreign business corporations or domestic corporations may be effected if the foreign corporations are authorized by the laws under which they are formed to effect the merger. The surviving corporation may be any one of the constituent corporations and shall continue to exist under the laws of the state or place of its incorporation.

(b) If the surviving corporation is a mutual benefit corporation, the merger proceedings with respect to that corporation and any domestic disappearing corporation shall conform to the provisions of this chapter and other applicable laws of this state, but if the surviving corporation is a foreign corporation, then, subject to the requirements of subdivision (d) and Section 8012 the merger proceedings may be in accordance with the laws of the state or place of incorporation of the surviving corporation.

(c) If the surviving corporation is a mutual benefit corporation, the agreement and the officers' certificate of each constituent corporation shall be filed as provided in Section 8014 and thereupon, subject to subdivision (c) of Section 5008, the merger shall be effective as to each corporation; and each foreign disappearing corporation that is qualified for the transaction of intrastate business shall, by virtue of the filing, automatically surrender its right to transact intrastate business.

(d) If the surviving corporation is a foreign corporation, or foreign business corporation, the merger shall become effective in accordance with the law of the jurisdiction in which it is organized, but shall be effective as to any disappearing corporation as of the time of effectiveness in the foreign jurisdiction upon the filing in this state as required by this subdivision. There shall be filed as to the domestic disappearing corporation or corporations the documents described in any one of the following paragraphs:

(1) A copy of the agreement, certificate, or other document filed by the surviving foreign corporation in the state or place of its incorporation for the purpose of effecting the merger, which copy shall be certified by the public officer having official custody of the original.

(2) An executed counterpart of the agreement, certificate, or other document filed by the surviving corporation in the state or place of its incorporation for the purpose of effecting the merger.

(3) A copy of the agreement of merger with an officers' certificate of the surviving foreign corporation and of each constituent domestic corporation attached, which officers' certificates shall conform to the requirements of Section 8014.

(e) If the date of the filing in this state pursuant to subdivision (d) is more than six months after the time of the effectiveness in the foreign jurisdiction, or if the powers of the domestic corporation are suspended at the time of effectiveness in the foreign jurisdiction, the merger shall be effective as to the domestic disappearing corporation or corporations as of the date of filing in this state. Each foreign disappearing corporation that is qualified for the transaction of intrastate business shall automatically by the filing pursuant to subdivision (d) surrender its right to transact intrastate business as of the date of filing in this state regardless of the time of effectiveness as to a domestic disappearing corporation.

(Amended by Stats. 2006, Ch. 773, Sec. 23. Effective September 29, 2006.)

8019. If an agreement of merger is entered into between a nonprofit corporation and a business corporation: (a) Sections 6011, 6012, 6014, and 6015 shall apply to any constituent public benefit corporation; (b) Sections 8011, 8011.5, 8012, 8014, and 8015 shall apply to any constituent mutual benefit corporation; (c) Sections 6014 and 6015 and subdivisions (c) and (d) of Section 9640 shall apply to any constituent religious corporation; and (d) Sections 1101, 1101.1, 1103, and 1104 shall apply to any constituent business corporation.

(Amended by Stats. 1981, Ch. 587, Sec. 44.)

8019.1. (a) Subject to the provisions of Section 8010, any one or more corporations may merge with one or more other business entities (Section 5063.5). One or more other domestic corporations, foreign corporations (Section 5053), and foreign business corporations (Section 5052) may be parties to the merger. Notwithstanding the provisions of this section, such a merger may be effected only if:

(1) In a merger in which a domestic corporation or domestic other business entity is a party, it is authorized by the laws under which it is organized to effect the merger.

(2) In a merger in which a foreign corporation or foreign business corporation is a party, it is authorized by the laws under which it is organized to effect the merger.

(3) In a merger in which a foreign other business entity is a party, it is authorized by the laws under which it is organized to effect the merger.

(b) Each corporation and each other party which desires to merge shall approve an agreement of merger. The board and the members (Section 5034) of each corporation which desires to merge, and each other person or persons, if any, whose approval of an amendment of the articles of that corporation is required by the articles or bylaws shall approve the agreement of merger. The agreement of merger shall be approved on behalf of each other constituent party by those persons authorized or required to approve the merger by the laws under which it is organized. The parties desiring to merge shall be parties to the agreement of merger and other persons, including a parent party (Section 5064.5), may be parties to the agreement of merger. The agreement of merger shall state all of the following:

(1) The terms and conditions of the merger.

(2) The name and place of incorporation or organization of each party and the identity of the surviving party.

(3) The amendments, if any, subject to Sections 7810 and 7816, to the articles of the surviving corporation, if applicable, to be effected by the merger. The name of the surviving corporation may be, subject to subdivisions (b) and (c) of Section 7122, the same as or similar to the name of a disappearing party to the merger.

(4) The manner, if any, of converting the memberships or securities of each of the constituent corporations into shares, memberships, interests, or other securities of the surviving party; and, if any memberships or securities of