

## HOUSE BILL No. 2697

By Committee on Judiciary

2-12

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1 AN ACT concerning the Kansas general corporation code; relating to  
2 public benefit corporations; amending K.S.A. 2015 Supp. 17-7903 and  
3 17-7919 and repealing the existing sections.  
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5 *Be it enacted by the Legislature of the State of Kansas:*

6 New Section 1. Sections 1 through 9, and amendments thereto, shall  
7 apply to all public benefit corporations, as defined in section 2, and  
8 amendments thereto. If a corporation elects to become a public benefit  
9 corporation under this act in the manner prescribed in this act, it shall be  
10 subject in all respects to the provisions of the Kansas general corporation  
11 code, except to the extent this act imposes additional or different  
12 requirements, in which case such requirements shall apply.

13 New Sec. 2. (a) A "public benefit corporation" is a for-profit  
14 corporation organized under and subject to the requirements of this act that  
15 is intended to produce a public benefit or public benefits and to operate in  
16 a responsible and sustainable manner. To that end, a public benefit  
17 corporation shall be managed in a manner that balances the stockholders'  
18 pecuniary interests, the best interests of those materially affected by the  
19 corporation's conduct, and the public benefit or public benefits identified  
20 in its articles of incorporation. In the articles of incorporation, a public  
21 benefit corporation shall:

22 (1) Identify within its statement of business or purpose pursuant to  
23 K.S.A. 17-6002(a)(3), and amendments thereto, one or more specific  
24 public benefits to be promoted by the corporation; and

25 (2) state within its heading the name of the corporation and that it is a  
26 public benefit corporation pursuant to K.S.A. 2015 Supp. 17-7919(b), and  
27 amendments thereto.

28 (b) "Public benefit" means a positive effect, or reduction of negative  
29 effects, on one or more categories of persons, entities, communities or  
30 interests, other than stockholders in their capacities as stockholders,  
31 including, but not limited to, effects of an artistic, charitable, cultural,  
32 economic, educational, environmental, literary, medical, religious,  
33 scientific or technological nature. "Public benefit provisions" means the  
34 provisions of the articles of incorporation contemplated by this section.

35 New Sec. 3. (a) Notwithstanding any other provisions of this act, a  
36 corporation that is not a public benefit corporation, may not, without the

1 approval of  $\frac{2}{3}$  of the outstanding stock of the corporation entitled to vote  
2 thereon:

3 (1) Amend its articles of incorporation to include a provision  
4 authorized by section 2(a)(1), and amendments thereto; or

5 (2) merge or consolidate with or into another entity if, as a result of  
6 such merger or consolidation, the shares in such corporation would  
7 become, or be converted into or exchanged for the right to receive, shares  
8 or other equity interests in a domestic or foreign public benefit corporation  
9 or similar entity.

10 The restrictions of this section shall not apply prior to the time that the  
11 corporation has received payment for any of its capital stock, or in the case  
12 of a nonstock corporation, prior to the time that it has members.

13 (b) Any stockholder of a corporation that is not a public benefit  
14 corporation that holds shares of stock of such corporation immediately  
15 prior to the effective time of:

16 (1) (A) An amendment to the corporation's articles of incorporation to  
17 include a provision authorized by section 2(a)(1), and amendments thereto;  
18 or

19 (B) a merger or consolidation that would result in the conversion of  
20 the corporation's stock into or exchange of the corporation's stock for the  
21 right to receive shares or other equity interests in a domestic or foreign  
22 public benefit corporation or similar entity; and

23 (2) has neither voted in favor of such amendment, or such merger or  
24 consolidation, nor consented thereto in writing pursuant to K.S.A. 17-  
25 6518, and amendments thereto, shall be entitled to an appraisal by the  
26 district court of the fair value of the stockholder's shares of stock, except  
27 as set forth in subsection (e).

28 (c) Notwithstanding any other provisions of this act, a corporation  
29 that is a public benefit corporation may not, without the approval of  $\frac{2}{3}$  of  
30 the outstanding stock of the corporation entitled to vote thereon:

31 (1) Amend its articles of incorporation to delete or amend a provision  
32 authorized by section 2(a)(1) or section 6(f), and amendments thereto; or

33 (2) merge or consolidate with or into another entity if, as a result of  
34 such merger or consolidation, the shares in such corporation would  
35 become, or be converted into or exchanged for the right to receive, shares  
36 or other equity interests in a domestic or foreign corporation that is not a  
37 public benefit corporation or similar entity and the articles of  
38 incorporation, or similar governing instrument, of which does not contain  
39 the identical provisions identifying the public benefit or public benefits  
40 pursuant to section 2(a)(1), and amendments thereto, or imposing  
41 requirements pursuant to section 6(f), and amendments thereto.

42 (d) Any stockholder of a corporation that is a public benefit  
43 corporation that holds shares of stock of such corporation immediately

1 prior to the effective time of:

2 (1) (A) An amendment to the corporation's articles of incorporation to  
3 remove a provision authorized by section 2(a)(1), and amendments  
4 thereto; or

5 (B) a merger or consolidation that would result in the conversion of  
6 the corporation's stock into or exchange of the corporation's stock for the  
7 right to receive shares or other equity interests in a domestic or foreign  
8 entity other than a public benefit corporation or similar entity; and

9 (2) has neither voted in favor of such amendment or such merger or  
10 consolidation nor consented thereto in writing pursuant to K.S.A. 17-6518,  
11 and amendments thereto, shall be entitled to an appraisal by the district  
12 court of the fair value of the stockholder's shares of stock, except as set  
13 forth in subsection (e).

14 (e) No appraisal rights under this section shall be available for the  
15 shares of any class or series of stock, which stock, or depository receipts in  
16 respect thereof, at the record date fixed to determine the stockholders  
17 entitled to receive notice of the meeting of stockholders to act upon the  
18 agreement of merger or consolidation or amendment, were either:

19 (1) Listed on a national securities exchange; or

20 (2) held of record by more than 2,000 holders, unless, in the case of a  
21 merger or consolidation, the holders thereof are required by the terms of an  
22 agreement of merger or consolidation to accept for such stock anything  
23 except:

24 (A) Shares of stock of any other corporation, or depository receipts in  
25 respect thereof, which shares of stock, or depository receipts in respect  
26 thereof, or depository receipts at the effective date of the merger or  
27 consolidation will be either listed on a national securities exchange or held  
28 of record by more than 2,000 holders;

29 (B) cash in lieu of fractional shares or fractional depository receipts  
30 described in subparagraph (A); or

31 (C) any combination of the shares of stock, depository receipts and  
32 cash in lieu of fractional shares or fractional depository receipts described  
33 in subparagraphs (A) and (B).

34 New Sec. 4. Any stock certificate issued by a public benefit  
35 corporation shall note conspicuously that the corporation is a public  
36 benefit corporation formed pursuant to this act. Any notice sent by a public  
37 benefit corporation pursuant to K.S.A. 17-6401(f), and amendments  
38 thereto, shall state conspicuously that the corporation is a public benefit  
39 corporation formed pursuant to this act.

40 New Sec. 5. (a) The board of directors shall manage or direct the  
41 business and affairs of the public benefit corporation in a manner that  
42 balances the pecuniary interests of the stockholders, the best interests of  
43 those materially affected by the corporation's conduct, and the specific

1 public benefit or public benefits identified in its articles of incorporation.

2 (b) A director of a public benefit corporation shall not, by virtue of  
3 the public benefit provisions or section 2(a), and amendments thereto,  
4 have any duty to any person on account of any interest of such person in  
5 the public benefit or public benefits identified in the articles of  
6 incorporation or on account of any interest materially affected by the  
7 corporation's conduct and, with respect to a decision implicating the  
8 balance requirement in subsection (a), will be deemed to satisfy such  
9 director's fiduciary duties to stockholders and the corporation if such  
10 director's decision is both informed and disinterested and not such that no  
11 person of ordinary, sound judgment would approve.

12 (c) The articles of incorporation of a public benefit corporation may  
13 include a provision that any disinterested failure to satisfy this section shall  
14 not, for the purposes of K.S.A. 17- 6002(b)(8) or 17-6305, and  
15 amendments thereto, constitute an act or omission not in good faith, or a  
16 breach of the duty of loyalty.

17 New Sec. 6. (a) A public benefit corporation shall include in every  
18 notice of a meeting of stockholders a statement to the effect that it is a  
19 public benefit corporation formed pursuant to this article.

20 (b) A public benefit corporation shall no less than annually provide its  
21 stockholders with a statement as to the corporation's promotion of the  
22 public benefit or public benefits identified in the articles of incorporation  
23 and of the best interests of those materially affected by the corporation's  
24 conduct. The statement shall include:

25 (1) The objectives the board of directors has established to promote  
26 such public benefit or public benefits and interests;

27 (2) the standards the board of directors has adopted to measure the  
28 corporation's progress in promoting such public benefit or public benefits  
29 and interests;

30 (3) objective factual information based on those standards regarding  
31 the corporation's success in meeting the objectives for promoting such  
32 public benefit or public benefits and interests; and

33 (4) an assessment of the corporation's success in meeting the  
34 objectives and promoting such public benefit or public benefits and  
35 interests.

36 (c) A public benefit corporation shall provide the statement described  
37 in subsection (b) to its stockholders at the time prescribed by K.S.A. 17-  
38 7503, and amendments thereto, for the filing of the public benefit  
39 corporation's annual report.

40 (d) The statement described in subsection (b) shall be based on a  
41 third-party standard. A "third-party standard" means a standard for  
42 defining, reporting and assessing promotion of the public benefit or public  
43 benefits and interests identified in the public benefit corporation's articles

1 of incorporation that:

2 (1) Is developed by a person or entity that is independent of the  
3 public benefit corporation; and

4 (2) is transparent because the following information about the  
5 standard is publicly available:

6 (A) The factors considered when measuring the performance of a  
7 business;

8 (B) the relative weightings of those factors; and

9 (C) the identity of the persons who developed and control changes to  
10 the standard and the process by which those changes are made.

11 For purposes of this section, the term "independent" means having no  
12 material relationship with the public benefit corporation or any of its  
13 directors, officers, or affiliates, as determined by the board of the public  
14 benefit corporation or a committee thereof.

15 (e) A public benefit corporation shall post its most recent statement  
16 described in subsection (b) on the public portion of its website, if any,  
17 concurrently with the delivery of such statement to its stockholders under  
18 subsection (c). If a public benefit corporation does not have a website, it  
19 shall provide a copy of such statement, without charge, to any person that  
20 requests a copy. The compensation paid to directors and any other  
21 financial or proprietary information contained in the statement described in  
22 subsection (b) may be omitted from any statement that is publicly posted  
23 or provided to any person pursuant to this subsection, other than a  
24 statement provided to a stockholder, director or officer.

25 (f) The articles of incorporation or bylaws of a public benefit  
26 corporation may require that the corporation obtain a periodic third-party  
27 certification addressing the corporation's promotion of the public benefit or  
28 public benefits identified in the articles of incorporation or the best  
29 interests of those materially affected by the corporation's conduct.

30 New Sec. 7. Stockholders of a public benefit corporation owning  
31 individually or collectively, as of the date of instituting such derivative  
32 suit, at least 2% of the corporation's outstanding shares or, in the case of a  
33 corporation with shares listed on a national securities exchange, the lesser  
34 of such percentage or shares of at least \$2,000,000 in market value may  
35 maintain a derivative lawsuit to enforce the requirements set forth in  
36 section 5(a), and amendments thereto.

37 New Sec. 8. This act shall not affect a statute or rule of law that is or  
38 would be applicable to any corporation that is organized under this act but  
39 is not a public benefit corporation, except as provided in section 3, and  
40 amendments thereto.

41 New Sec. 9. Sections 1 through 9 shall be part of and supplemental to  
42 the Kansas general corporation code, K.S.A. 17-6001 et seq., and  
43 amendments thereto.

1       Sec. 10. K.S.A. 2015 Supp. 17-7903 is hereby amended to read as  
2 follows: 17-7903. ~~(A)~~ The following documents related to corporations  
3 shall be filed with the secretary of state:

4       ~~(A)~~ (a) For-profit filings:

5       ~~(A)~~ (1) For-profit articles of incorporation as set forth in K.S.A. 17-  
6 6002, and amendments thereto;

7       ~~(B)~~ (2) professional association articles of incorporation as set forth  
8 in K.S.A. 17-2709, 17-2711 and 17-6002, and amendments thereto;

9       ~~(C)~~ (3) close corporation articles of incorporation as set forth in  
10 K.S.A. 17-6426, 17-7201, 17-7202 and 17-7203, and amendments thereto;

11       (4) *public benefit corporation articles of incorporation as set forth in*  
12 *section 1, and amendments thereto;*

13       ~~(D)~~ (5) foreign for-profit application for authority as set forth in  
14 K.S.A. 2015 Supp. 17-7931 and K.S.A. 17-7307 through 17-7510, and  
15 amendments thereto;

16       ~~(E)~~ (6) for-profit annual report as set forth in K.S.A. 17-7503 and 17-  
17 7505, and amendments thereto;

18       ~~(F)~~ (7) professional association annual report as set forth in K.S.A.  
19 17-2718, and amendments thereto;

20       ~~(G)~~ (8) for-profit certificate of amendment as set forth in K.S.A. 17-  
21 6003, 17-6401, 17-6601, 17-6602 and 17-6603, and amendments thereto;

22       ~~(H)~~ (9) amendment to professional associations as set forth in K.S.A.  
23 17-2709, and amendments thereto;

24       ~~(I)~~ (10) foreign for-profit corporation certificate of amendment as set  
25 forth in K.S.A. 17-7302, and amendments thereto;

26       ~~(J)~~ (11) restated articles of incorporation as set forth in K.S.A. 17-  
27 6605, and amendments thereto;

28       ~~(K)~~ (12) change of registered office or resident agent as set forth in  
29 sections K.S.A. 2015 Supp. 17-7926, 17-7927, 17-7928 and 17-7929, and  
30 amendments thereto;

31       ~~(L)~~ (13) for-profit certificate of correction as set forth in K.S.A. 2015  
32 Supp. 17-7912, and amendments thereto;

33       ~~(M)~~ (14) mergers as set forth in K.S.A. 17-6701 through 17-6708,  
34 and amendments thereto;

35       ~~(N)~~ (15) foreign mergers as set forth in K.S.A. 17-7302, and  
36 amendments thereto;

37       ~~(O)~~ (16) certificate of amendment or termination of merger as set  
38 forth in K.S.A. 17-6701, and amendments thereto;

39       ~~(P)~~ (17) foreign corporation merger as set forth in K.S.A. 17-7302,  
40 and amendments thereto;

41       ~~(Q)~~ (18) certificate of reinstatement as set forth in K.S.A. 17-7002,  
42 and amendments thereto;

43       ~~(R)~~ (19) certificate of dissolution prior to commencing business as set

1 forth in K.S.A. 17-6803, and amendments thereto;

2 (S) (20) certificate of dissolution by stockholder's meeting as set forth  
3 in K.S.A. 17-6804, and amendments thereto;

4 (T) (21) certificate of dissolution by written consent as set forth in  
5 K.S.A. 17-6804, and amendments thereto;

6 (U) (22) foreign certificate of cancellation as set forth in K.S.A. 2015  
7 Supp. 17-7936, and amendments thereto; and

8 (V) (23) certificate of revocation of dissolution as set forth in K.S.A.  
9 17-7001, and amendments thereto.

10 (Z) (b) Not-for-profit filings:

11 (A) (1) Not-for-profit articles of incorporation as set forth in K.S.A.  
12 17-6002, and amendments thereto;

13 (B) (2) foreign not-for-profit application for authority as set forth in  
14 K.S.A. 2015 Supp. 17-7931, and amendments thereto;

15 (C) (3) not-for-profit annual report as set forth in K.S.A. 17-7504,  
16 and amendments thereto;

17 (D) (4) not-for-profit certificate of amendment as set forth in K.S.A.  
18 17-6602, and amendments thereto;

19 (E) (5) not-for-profit certificate of correction as set forth in K.S.A.  
20 2015 Supp. 17-7912, and amendments thereto;

21 (F) (6) not-for-profit change of registered office or resident agent as  
22 set forth in K.S.A. 2015 Supp. 17-7926, 17-7927, 17-7928 and 17-7929,  
23 and amendments thereto;

24 (G) (7) not-for-profit certificate of reinstatement as set forth in K.S.A.  
25 17-7002, and amendments thereto; and

26 (H) (8) certificate of dissolution as set forth in K.S.A. 17-6803, 17-  
27 6804 and 17-6805, and amendments thereto.

28 ~~(b) This section shall take effect on and after January 1, 2015.~~

29 Sec. 11. K.S.A. 2015 Supp. 17-7919 is hereby amended to read as  
30 follows: 17-7919. (a) The name of a corporation, except for banks, *savings*  
31 *and loan associations, savings banks and public benefit corporations*, shall  
32 contain:

33 (a) (1) One of the following words: "Association"; "church";  
34 "college"; "company"; "corporation"; "club"; "foundation"; "fund";  
35 "incorporated"; "institute"; "society"; "union"; "university"; "syndicate" or  
36 "limited";

37 (b) (2) one of the following abbreviations: "Co."; "corp."; "inc." or  
38 "ltd."; or

39 (c) (3) words or abbreviations of like import in other languages if  
40 they are written in Roman characters or letters.

41 (b) *The name of a public benefit corporation shall contain:*

42 (1) *The words "public benefit corporation";*

43 (2) *the abbreviation "P.B.C.";*

- 1       (3) *the designation "PBC"; or*
- 2       (4) *words or abbreviations of like import in other languages if they*
- 3 *are written in Roman characters or letters.*
- 4       ~~(d) This section shall take effect on and after January 1, 2015.~~
- 5       Sec. 12. K.S.A. 2015 Supp. 17-7903 and 17-7919 are hereby
- 6 repealed.
- 7       Sec. 13. This act shall take effect and be in force from and after its
- 8 publication in the statute book.