

# Journal of the House

## SIXTY-FOURTH DAY

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HALL OF THE HOUSE OF REPRESENTATIVES,  
TOPEKA, KS, Tuesday, May 9, 2017, 10:00 a.m.

The House met pursuant to adjournment with Speaker pro tem Schwab in the chair.

The roll was called with 123 members present.  
Rep. Wheeler was excused on verified illness.  
Rep. Claeys was excused on excused absence by the Speaker.  
Excused later: Rep. Williams.

Prayer by Chaplain Brubaker:

Almighty God,  
once again we are thankful and blessed  
with the beautiful day You have given us  
and for the privilege we have to be here today.  
We read in the Bible of Benaiah  
who went down into a pit on a snowy day  
and killed a lion.  
Some may be feeling like they are on a slippery slope,  
as they battle the lions of education, taxes and budgets.  
Just as You gave strength and courage to Benaiah,  
I ask that you give the same to these leaders.  
Help them to make the right decisions,  
no matter how difficult it may be.  
In an effort to make the right decisions,  
remind them that it is You, God,  
who arms them with strength and makes their way perfect.  
I ask for Your wisdom and guidance in Your Son's Name,  
Amen.

The Pledge of Allegiance was led by Rep. Weigel.

### MESSAGES FROM THE SENATE

The Senate adopts the Conference Committee report on **SB 89**.

### CHANGE OF CONFEREES

Reps. Waymaster, Davis and Wolfe Moore are appointed to replace Reps. Sloan, Rahjes and Victors as members of the conference committee on **HB 2079**.

**COMMITTEE ASSIGNMENT CHANGES**

Speaker pro tem Schwab announced the appointment of Rep. Curtis to replace Rep. Ruiz on Committee on Taxation on May 9 and 10, 2017.

On motion of Rep. Hineman, the House recessed until 2:00 p.m.

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**AFTERNOON SESSION**

The House met pursuant to recess with Speaker pro tem Schwab in the chair.

**MESSAGES FROM THE SENATE**

The Senate adopts the Conference Committee report on **HB 2041**.

The Senate adopts the Conference Committee report on **HB 2054**.

**INTRODUCTION OF ORIGINAL MOTIONS**

On motion of Rep. Hineman, pursuant to subsection (k) of Joint Rule 4 of the Joint Rules of the Senate and House of Representatives, the rules were suspended for the purpose of considering **HB 2153**.

**CONFERENCE COMMITTEE REPORT**

MADAM PRESIDENT and MR. SPEAKER: Your committee on conference on Senate amendments to **HB 2153** submits the following report:

The House accedes to all Senate amendments to the bill, and your committee on conference further agrees to amend the bill as printed with Senate Committee of the Whole amendments, as follows:

On page 1, by striking all in lines 8 through 32;

By striking all on pages 2 through 10;

On page 11, by striking all in lines 1 through 28; following line 28, by inserting:

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

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

(1) Identify within its statement of business or purpose pursuant to K.S.A. 17-

6002(a)(3), and amendments thereto, one or more specific public benefits to be promoted by the corporation; and

(2) state within its heading the name of the corporation and that it is a public benefit corporation pursuant to K.S.A. 2016 Supp. 17-7919(b), and amendments thereto.

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

(c) If the name of a public benefit corporation does not contain language stated in K.S.A. 2016 Supp. 17-7919(b)(1) through (4), and amendments thereto, the corporation shall, prior to issuing unissued shares of stock or disposing of treasury shares, provide notice to any person to whom such stock is issued or who acquires such treasury shares that it is a public benefit corporation; but such notice need not be provided if the issuance or disposal is pursuant to an offering registered under the securities act of 1933, 15 U.S.C. § 77r et seq., or if, at the time of issuance or disposal, the corporation has a class of securities that is registered under the securities exchange act of 1934, 15 U.S.C. § 78a et seq.

New Sec. 3. (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  $\frac{2}{3}$  of the outstanding stock of the corporation entitled to vote thereon:

(1) Amend its articles of incorporation to include a provision authorized by section 2(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 section 2(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  $\frac{2}{3}$  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 section 2(a)(1) or 6(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 section 2(a)(1), and amendments thereto, or imposing requirements pursuant to section 6(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 section 2(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).

New Sec. 4. Any stock certificate issued by a public benefit corporation shall note conspicuously that the corporation is a public benefit corporation formed pursuant to sections 1 through 9, and amendments thereto. Any notice sent by a public benefit corporation pursuant to K.S.A. 17-6401(f), and amendments thereto, shall state conspicuously that the corporation is a public benefit corporation formed pursuant to sections 1 through 9, and amendments thereto.

New Sec. 5. (a) The board of directors shall manage or direct the business and affairs of the public benefit corporation in a manner that balances the pecuniary

interests of the stockholders, the best interests of those materially affected by the corporation's conduct and the specific public benefit or public benefits identified in its articles of incorporation.

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

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

New Sec. 6. (a) A public benefit corporation shall include in every notice of a meeting of stockholders a statement to the effect that it is a public benefit corporation formed pursuant to sections 1 through 9, and amendments thereto.

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

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

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

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

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

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

(d) The statement described in subsection (b) shall be based on a third-party standard. A "third-party standard" means a standard for defining, reporting and assessing promotion of the public benefit or public benefits and interests identified in the public benefit corporation's articles of incorporation that: (1) Is developed by a person or entity that is independent of the public benefit corporation; and (2) is transparent because the following information about the standard is publicly available: (A) The factors considered when measuring the performance of a business; (B) the relative weightings of those factors; and (C) the identity of the persons who developed the standard and who control changes to the standard and the process by which those changes are made. For purposes of this section, the term "independent" means having no material relationship with the public benefit corporation or any of its directors, officers, or affiliates, as determined by the board of the public benefit corporation or a

committee thereof.

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

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

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

New Sec. 8. Sections 1 through 9, and amendments thereto, shall not affect a statute or rule of law that is or would be applicable to any corporation that is organized under the Kansas general corporation code but is not a public benefit corporation, except as provided in section 3, and amendments thereto.

New Sec. 9. Sections 1 through 9, and amendments thereto, shall be part of and supplemental to the Kansas general corporation code, articles 60 through 74 of chapter 17 of the Kansas Statutes Annotated, and amendments thereto.

Sec. 10. K.S.A. 2016 Supp. 17-6014 is hereby amended to read as follows: 17-6014. (a) Except as otherwise provided in subsections (b) and (c), the provisions of the Kansas general corporation code shall apply to nonstock corporations in the manner specified in this subsection:

(1) All references to stockholders of the corporation shall be deemed to refer to members of the corporation;

(2) all references to the board of directors of the corporation shall be deemed to refer to the governing body of the corporation;

(3) all references to directors or to members of the board of directors of the corporation shall be deemed to refer to members of the governing body of the corporation; and

(4) all references to stock, capital stock, or shares thereof of a corporation authorized to issue capital stock shall be deemed to refer to memberships of a nonprofit nonstock corporation and to membership interests of any other nonstock corporation.

(b) Subsection (a) shall not apply to:

(1) K.S.A. 17-6002(a)(4), (b)(1) and (b)(2), 17-6009(a), 17-6301, 17-6404, 17-6505, 17-6518, 17-6520(b), 17-6601, 17-6602, 17-6703, 17-6705, 17-6706, 17-6707, 17-6708, 17-6801, 17-6805, 17-6805a, 17-7001, 17-7002, 17-7503(a)(4) and (b)(4), 17-7504, 17-7505(a)(4) and (b)(4) and 17-7514(c) and K.S.A. 2016 Supp. 17-6014, and

amendments thereto, which apply to nonstock corporations by their terms;

(2) K.S.A. 17-6002(e), the last sentence of 17-6009(b), 17-6401, 17-6402, 17-6403, 17-6405, 17-6406, 17-6407(d), 17-6408, 17-6411, 17-6412, 17-6413, 17-6414, 17-6415, 17-6416, 17-6417, 17-6418, 17-6501, 17-6502, 17-6503, 17-6504, 17-6506, 17-6509, 17-6512, 17-6521, 17-6603, 17-6604, 17-6701, 17-6702, 17-6803 and 17-6804 and K.S.A. 2016 Supp. 17-6427, 17-6428 ~~and~~, 17-6429 and section 4, and amendments thereto; and

(3) article 72 and article 73 of chapter 17 of the Kansas Statutes Annotated, and amendments thereto.

(c) In the case of a nonprofit nonstock corporation, subsection (a) shall not apply to:

(1) The sections and articles listed in subsection (b);

(2) K.S.A. 17-6002(b)(3), 17-6304(a)(2), 17-6507, 17-6508, 17-6712, 17-7503, 17-7505, 17-7509, 17-7511 and 17-7514 and K.S.A. 2016 Supp. 17-6011(a)(2) and (a)(3), and amendments thereto; and

(3) article 64 of chapter 17 of the Kansas Statutes Annotated, and amendments thereto, and sections 1 through 9, and amendments thereto.

(d) For purposes of the Kansas general corporation code:

(1) A "charitable nonstock corporation" is any nonprofit nonstock corporation that is exempt from taxation under § 501(c)(3) of the federal internal revenue code of 1986, 26 U.S.C. § 501(c)(3);

(2) a "membership interest" is, unless otherwise provided in a nonstock corporation's articles of incorporation, a member's share of the profits and losses of a nonstock corporation, or a member's right to receive distributions of the nonstock corporation's assets, or both;

(3) a "nonprofit nonstock corporation" is a nonstock corporation that does not have membership interests; and

(4) a "nonstock corporation" is any corporation organized under the Kansas general corporation code that is not authorized to issue capital stock.

~~(e) This section shall be part of and supplemental to article 60 of chapter 17 of the Kansas Statutes Annotated, and amendments thereto.~~

Sec. 11. K.S.A. 2016 Supp. 17-6712 is hereby amended to read as follows: 17-6712. (a) 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 corporation; the words "stock" and "share" mean and include what is ordinarily meant by those words; 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) 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 K.S.A. 17-6701(g), and amendments thereto, and, subject to subsection (b)(3), K.S.A. 17-6701(h), 17-6702, 17-6705, 17-6706, 17-6707 and 17-6708, and amendments thereto:

(1) Except as expressly provided in section 3, and amendments thereto, 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, were either: (A) Listed on a national securities exchange; or (B) held of record by more than 2,000 holders, 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 K.S.A. 17-6701(f), and amendments thereto.

(2) Notwithstanding 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, 17-6705, 17-6706, 17-6707 and 17-6708, 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 thereof;

(B) 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;

(C) cash in lieu of fractional shares or fractional depository receipts described in 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 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(h) or 17-6703, and amendments thereto, is not owned by the parent immediately prior to the merger, appraisal rights shall be available for the shares of the subsidiary Kansas corporation.

(4) In the event of an amendment to a corporation's articles of incorporation contemplated by section 3, and amendments thereto, appraisal rights shall be available as contemplated by section 3, and amendments thereto, and the procedures of this section, including those set forth in subsections (d) and (e), shall apply as nearly as practicable, with the word "amendment" substituted for the words "merger or consolidation," and the word "corporation" substituted for the words "constituent corporation" or "surviving or resulting corporation."

(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 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 K.S.A. 2016 Supp. 17-6014, 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(h) or 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 K.S.A. 2016 Supp. 17-6014, 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(h), and amendments thereto, within the later of the consummation of the tender or exchange offer contemplated by K.S.A. 17-6701(h), 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(h), and amendments thereto, later than the later of the consummation of the tender or exchange offer contemplated by K.S.A. 17-6701(h), and amendments thereto, and 20 days 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 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 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.

(f) Upon the filing of any such petition by a stockholder, service of a copy thereof shall be made upon the surviving or resulting corporation, which shall within 20 days after such service file in the office of the clerk of the court in which the petition was filed a duly verified list containing the names and addresses of all stockholders who have demanded payment for their shares and with whom agreements as to the value of their shares have not been reached by the surviving or resulting corporation. If the

petition shall be filed by the surviving or resulting corporation, the petition shall be accompanied by such a duly verified list. The clerk of the court, if so ordered by the court, shall give notice of the time and place fixed for the hearing of such petition by registered or certified mail to the surviving or resulting corporation and to the stockholders shown on the list at the addresses therein stated. Such notice shall also be given by one or more publications at least one week before the day of the hearing, in a newspaper of general circulation published in the county in which the court is located or such publication as the court deems advisable. The forms of the notices by mail and by publication shall be approved by the court, and the costs thereof shall be borne by the surviving or resulting corporation.

(g) At the hearing on such petition, the court shall determine the stockholders who have complied with this section and who have become entitled to appraisal rights. The court may require the stockholders who have demanded an appraisal for their shares and who hold stock represented by certificates to submit their certificates of stock to the clerk of the court for notation thereon of the pendency of the appraisal proceedings; and if any stockholder fails to comply with such direction, the court may dismiss the proceedings as to such stockholder.

(h) After the court determines the stockholders entitled to an appraisal, the appraisal proceeding shall be conducted in accordance with the rules of the district court, including any rules specifically governing appraisal proceedings. Through such proceeding the court shall determine the fair value of the shares exclusive of any element of value arising from the accomplishment or expectation of the merger or consolidation, together with interest, if any, to be paid upon the amount determined to be the fair value. In determining such fair value, the court shall take into account all relevant factors. Unless the court in its discretion determines otherwise for good cause shown, interest from the effective date of the merger through the date of payment of the judgment shall be compounded quarterly and shall accrue at 5% over the federal reserve discount rate, including any surcharge, as established from time to time during the period between the effective date of the merger and the date of payment of the judgment. Upon application by the surviving or resulting corporation or by any stockholder entitled to participate in the appraisal proceeding, the court may, in its discretion, proceed to trial upon the appraisal prior to the final determination of the stockholders entitled to an appraisal. Any stockholder whose name appears on the list filed by the surviving or resulting corporation pursuant to subsection (f) and who has submitted such stockholder's certificates of stock to the clerk of the court, if such is required, may participate fully in all proceedings until it is finally determined that such stockholder is not entitled to appraisal rights under this section.

(i) The court shall direct the payment of the fair value of the shares, together with interest, if any, by the surviving or resulting corporation to the stockholders entitled thereto. Payment shall be so made to each such stockholder, in the case of holders of uncertificated stock forthwith, and the case of holders of shares represented by certificates upon the surrender to the corporation of the certificates representing such stock. The court's decree may be enforced as other decrees in the district court may be enforced, whether such surviving or resulting corporation be a corporation of this state or of any state.

(j) The costs of the proceeding may be determined by the court and taxed upon the parties as the court deems equitable in the circumstances. Upon application of a

stockholder, the court may order all or a portion of the expenses incurred by any stockholder in connection with the appraisal proceeding, including, without limitation, reasonable attorney fees and the fees and expenses of experts, to be charged pro rata against the value of all the shares entitled to an appraisal.

(k) From and after the effective date of the merger or consolidation, no stockholder who has demanded appraisal rights as provided in subsection (d) shall be entitled to vote such stock for any purpose or to receive payment of dividends or other distributions on the stock, except dividends or other distributions payable to stockholders of record at a date which is prior to the effective date of the merger or consolidation; provided, however, that if no petition for an appraisal shall be filed within the time provided in subsection (e), or if such stockholder shall deliver to the surviving or resulting corporation a written withdrawal of such stockholder's demand for an appraisal and an acceptance of the merger or consolidation, either within 60 days after the effective date of the merger or consolidation as provided in subsection (e) or thereafter with the written approval of the corporation, then the right of such stockholder to an appraisal shall cease. Notwithstanding the foregoing, no appraisal proceeding in the district court shall be dismissed as to any stockholder without the approval of the court, and such approval may be conditioned upon such terms as the court deems just, except that this provision shall not affect the right of any stockholder who has not commenced an appraisal proceeding or joined that proceeding as a named party to withdraw such stockholder's demand for appraisal and to accept the terms offered upon the merger or consolidation within 60 days after the effective date of the merger or consolidation, as set forth in subsection (e).

(l) The shares of the surviving or resulting corporation to which the shares of such objecting stockholders would have been converted had they assented to the merger or consolidation shall have the status of authorized and unissued shares of the surviving or resulting corporation.

Sec. 12. K.S.A. 2016 Supp. 17-7903 is hereby amended to read as follows: 17-7903. The following documents related to corporations shall be filed with the secretary of state:

(a) For-profit filings:

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

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

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

(4) public benefit corporation articles of incorporation as set forth in section 2, and amendments thereto;

(5) certificate of validation as set forth in K.S.A. 2016 Supp. 17-6428, and amendments thereto;

~~(5)~~(6) foreign for-profit application for authority as set forth in K.S.A. 2016 Supp. 17-7931 and K.S.A. 17-7307 through 17-7510, and amendments thereto;

~~(6)~~(7) for-profit annual report as set forth in K.S.A. 17-7503 and 17-7505, and amendments thereto;

~~(7)~~(8) professional association annual report as set forth in K.S.A. 17-2718, and amendments thereto;

~~(8)~~(9) for-profit certificate of amendment as set forth in K.S.A. 17-6003, 17-6401, 17-6601, 17-6602 and 17-6603, and amendments thereto;

~~(9)~~(10) amendment to professional associations as set forth in K.S.A. 17-2709, and amendments thereto;

~~(10)~~(11) foreign for-profit corporation certificate of amendment as set forth in K.S.A. 17-7302, and amendments thereto;

~~(11)~~(12) restated articles of incorporation as set forth in K.S.A. 17-6605, and amendments thereto;

~~(12)~~(13) change of registered office or resident agent as set forth in sections K.S.A. 2016 Supp. 17-7926, 17-7927, 17-7928 and 17-7929, and amendments thereto;

~~(13)~~(14) for-profit certificate of correction as set forth in K.S.A. 2016 Supp. 17-7912, and amendments thereto;

~~(14)~~(15) mergers as set forth in K.S.A. 17-6701 through 17-6708, and amendments thereto;

~~(15)~~(16) foreign mergers as set forth in K.S.A. 17-7302, and amendments thereto;

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

~~(17)~~(18) foreign corporation merger as set forth in K.S.A. 17-7302, and amendments thereto;

~~(18)~~(19) certificate of reinstatement as set forth in K.S.A. 17-7002, and amendments thereto;

~~(19)~~(20) certificate of dissolution prior to commencing business as set forth in K.S.A. 17-6803, and amendments thereto;

~~(20)~~(21) certificate of dissolution by stockholder's meeting as set forth in K.S.A. 17-6804, and amendments thereto;

~~(21)~~(22) certificate of dissolution by written consent as set forth in K.S.A. 17-6804, and amendments thereto;

~~(22)~~(23) foreign certificate of cancellation as set forth in K.S.A. 2016 Supp. 17-7936, and amendments thereto; and

~~(23)~~(24) certificate of revocation of dissolution as set forth in K.S.A. 17-7001, and amendments thereto.

(b) Not-for-profit filings:

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

(2) foreign not-for-profit application for authority as set forth in K.S.A. 2016 Supp. 17-7931, and amendments thereto;

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

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

(5) not-for-profit certificate of correction as set forth in K.S.A. 2016 Supp. 17-7912, and amendments thereto;

(6) not-for-profit change of registered office or resident agent as set forth in K.S.A. 2016 Supp. 17-7926, 17-7927, 17-7928 and 17-7929, and amendments thereto;

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

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

and amendments thereto.

Sec. 13. K.S.A. 2016 Supp. 17-7919 is hereby amended to read as follows: 17-7919. (a) The name of a corporation, except for banks, savings and loan associations ~~and~~, savings banks and public benefit corporations, shall contain:

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

~~(b)~~(2) one of the following abbreviations: "Co."; "corp."; "inc." or "Ltd."; or

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

(b) The name of a public benefit corporation shall contain either or both of one of the words, abbreviations or designations in subsection (a) or:

(1) The words "public benefit corporation";

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

(3) the designation "PBC"; or

(4) words or abbreviations of like import in other languages if they are written in Roman characters or letters.

Sec. 14. K.S.A. 2016 Supp. 17-6014, 17-6712, 17-7903 and 17-7919 are hereby repealed.";

Also on page 11, in line 30, before the period by striking "Kansas register" and inserting "statute book";

And by renumbering sections accordingly;

On page 1, in the title, in line 1, by striking all after "concerning"; by striking all in lines 2 through 4; in line 5, by striking "6,112b" and inserting "public benefit corporations; relating to the Kansas general corporation code; business entity standard treatment act; amending K.S.A. 2016 Supp. 17-6014, 17-6712, 17-7903 and 17-7919";

And your committee on conference recommends the adoption of this report.

RICHARD E. WILBORN

JULIA LYNN

DAVID HALEY

*Conferees on part of Senate*

BLAINE FINCH

FRED PATTON

JOHN CARMICHAEL

*Conferees on part of House*

On motion of Rep. Carmichael, the conference committee report on **HB 2153** was adopted.

On roll call, the vote was: Yeas 121; Nays 0; Present but not voting: 0; Absent or not voting: 4.

Yeas: Alcalá, Alford, Arnberger, Aurand, Averkamp, Baker, Ballard, Barker, Becker, Bishop, Blex, Brim, Burroughs, Campbell, Carlin, Carmichael, B. Carpenter, Clark, Clayton, Concannon, Corbet, Cox, Crum, S., Curtis, E. Davis, Deere, DeGraaf, Delperdang, Dierks, Dietrich, Dove, Elliott, Ellis, Eplee, Esau, Finch, Finney, Francis, Frownfelter, Gallagher, Garber, Gartner, Good, Hawkins, Helgerson, Henderson, Hibbard, Highberger, Highland, Hineman, Hodge, Hoffman, Holscher, Houser, Huebert,

Humphries, Jacobs, Jennings, Johnson, K. Jones, Judd-Jenkins, Karleskint, Kelly, Kessinger, Koesten, Kuether, Lakin, Landwehr, Lewis, Lusk, Lusker, Markley, Mason, Mastroni, Miller, Murnan, Neighbor, Ohaebosim, Orr, Osterman, Ousley, Parker, F. Patton, Phelps, Phillips, Pittman, R. Powell, Proehl, Rafie, Rahjes, Ralph, Resman, Rooker, Ruiz, Ryckman, Sawyer, Schreiber, Schroeder, Schwab, Seiwert, Sloan, Smith, A., Smith, E., Stogsdill, Sutton, S. Swanson, Tarwater, Terrell, Thimesch, Thompson, Trimmer, Vickrey, Victors, Ward, Waymaster, Weber, C., Weigel, Whipple, Whitmer, Winn, Wolfe Moore.

Nays: None.

Present but not voting: None.

Absent or not voting: Claeyes, Wheeler, K. Williams, Wilson.

#### **REPORT ON ENROLLED RESOLUTIONS**

**HR 6031** reported correctly enrolled and properly signed on May 9, 2017.

On motion of Rep. Hineman, the House adjourned until 10:00 a.m., Wednesday, May 10, 2017.

BECKIE HENDRICKS, JENNY HAUGH, JULIA WERNER, *Journal Clerks*.

SUSAN W. KANNARR, *Chief Clerk*.

