

HOUSE BILL No. 2125

By Committee on Judiciary

1-23

1 AN ACT concerning public benefit corporations; relating to the Kansas
2 general corporation code; business entity standard treatment act;
3 amending K.S.A. 2016 Supp. 17-6014, 17-6712, 17-7903 and 17-7919
4 and repealing the existing sections.
5

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

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

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

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

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

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

1 provisions of the articles of incorporation contemplated by this section.

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

12 New Sec. 3. (a) Notwithstanding any other provisions of the Kansas
13 general corporation code, a corporation that is not a public benefit
14 corporation, may not, without the approval of $\frac{2}{3}$ of the outstanding stock
15 of the corporation entitled to vote thereon:

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

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

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

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

29 (1) Holds shares of stock of such corporation immediately prior to the
30 effective time of:

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

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

38 (2) has neither voted in favor of such amendment or such merger or
39 consolidation nor consented thereto in writing pursuant to K.S.A. 17-6518,
40 and amendments thereto.

41 (c) Notwithstanding any other provisions of the Kansas general
42 corporation code, a corporation that is a public benefit corporation may
43 not, without the approval of $\frac{2}{3}$ of the outstanding stock of the corporation

1 entitled to vote thereon:

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

4 (2) merge or consolidate with or into another entity if, as a result of
5 such merger or consolidation, the shares in such corporation would
6 become, or be converted into or exchanged for the right to receive, shares
7 or other equity interests in a domestic or foreign corporation that is not a
8 public benefit corporation or similar entity and the articles of
9 incorporation, or similar governing instrument, of which does not contain
10 the identical provisions identifying the public benefit or public benefits
11 pursuant to section 2(a)(1), and amendments thereto, or imposing
12 requirements pursuant to section 6(f), and amendments thereto.

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

17 (1) Holds shares of stock of such corporation immediately prior to the
18 effective time of:

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

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

26 (2) has neither voted in favor of such amendment or such merger or
27 consolidation nor consented thereto in writing pursuant to K.S.A. 17-6518,
28 and amendments thereto.

29 (e) No appraisal rights under this section shall be available for the
30 shares of any class or series of stock, which stock, or depository receipts in
31 respect thereof, at the record date fixed to determine the stockholders
32 entitled to receive notice of the meeting of stockholders to act upon the
33 agreement of merger or consolidation or amendment, were either: (1)
34 Listed on a national securities exchange; or (2) held of record by more
35 than 2,000 holders, unless, in the case of a merger or consolidation, the
36 holders thereof are required by the terms of an agreement of merger or
37 consolidation to accept for such stock anything except: (A) Shares of stock
38 of any other corporation, or depository receipts in respect thereof, which
39 shares of stock, or depository receipts in respect thereof, or depository
40 receipts at the effective date of the merger or consolidation will be either
41 listed on a national securities exchange or held of record by more than
42 2,000 holders; (B) cash in lieu of fractional shares or fractional depository
43 receipts described in subparagraph (A); or (C) any combination of the

1 shares of stock, depository receipts and cash in lieu of fractional shares or
2 fractional depository receipts described in subparagraphs (A) and (B).

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

10 New Sec. 5. (a) The board of directors shall manage or direct the
11 business and affairs of the public benefit corporation in a manner that
12 balances the pecuniary interests of the stockholders, the best interests of
13 those materially affected by the corporation's conduct and the specific
14 public benefit or public benefits identified in its articles of incorporation.

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

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

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

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

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

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

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

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

7 (c) A public benefit corporation shall provide the statement described
8 in subsection (b) to its stockholders at the time prescribed by K.S.A. 17-
9 7503, and amendments thereto, for the filing of the public benefit
10 corporation's annual report.

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

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

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

41 New Sec. 7. Stockholders of a public benefit corporation owning
42 individually or collectively, as of the date of instituting such derivative
43 suit, at least 2% of the corporation's outstanding shares or, in the case of a

1 corporation with shares listed on a national securities exchange, the lesser
 2 of such percentage or shares of at least \$2,000,000 in market value, may
 3 maintain a derivative lawsuit to enforce the requirements set forth in
 4 section 5(a), and amendments thereto.

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

10 New Sec. 9. Sections 1 through 9, and amendments thereto, shall be
 11 part of and supplemental to the Kansas general corporation code, articles
 12 60 through 74 of chapter 17 of the Kansas Statutes Annotated, and
 13 amendments thereto.

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

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

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

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

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

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

30 (1) K.S.A. 17-6002(a)(4), (b)(1) and (b)(2), 17-6009(a), 17-6301, 17-
 31 6404, 17-6505, 17-6518, 17-6520(b), 17-6601, 17-6602, 17-6703, 17-
 32 6705, 17-6706, 17-6707, 17-6708, 17-6801, 17-6805, 17-6805a, 17-7001,
 33 17-7002, 17-7503(a)(4) and (b)(4), 17-7504, 17-7505(a)(4) and (b)(4) and
 34 17-7514(c) and K.S.A. 2016 Supp. 17-6014, and amendments thereto,
 35 which apply to nonstock corporations by their terms;

36 (2) K.S.A. 17-6002(e), the last sentence of 17-6009(b), 17-6401, 17-
 37 6402, 17-6403, 17-6405, 17-6406, 17-6407(d), 17-6408, 17-6411, 17-
 38 6412, 17-6413, 17-6414, 17-6415, 17-6416, 17-6417, 17-6418, 17-6501,
 39 17-6502, 17-6503, 17-6504, 17-6506, 17-6509, 17-6512, 17-6521, 17-
 40 6603, 17-6604, 17-6701, 17-6702, 17-6803 and 17-6804 and K.S.A. 2016
 41 Supp. 17-6427, 17-6428~~and~~, 17-6429 *and section 4*, and amendments
 42 thereto; and

43 (3) article 72 and article 73 of chapter 17 of the Kansas Statutes

1 Annotated, and amendments thereto.

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

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

5 (2) K.S.A. 17-6002(b)(3), 17-6304(a)(2), 17-6507, 17-6508, 17-6712,
6 17-7503, 17-7505, 17-7509, 17-7511 and 17-7514 and K.S.A. 2016 Supp.
7 17-6011(a)(2) and (a)(3), and amendments thereto; and

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

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

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

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

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

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

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

25 Sec. 11. K.S.A. 2016 Supp. 17-6712 is hereby amended to read as
26 follows: 17-6712. (a) Any stockholder of a corporation of this state who
27 holds shares of stock on the date of the making of a demand pursuant to
28 subsection (d) with respect to such shares, who continuously holds such
29 shares through the effective date of the merger or consolidation, who has
30 otherwise complied with subsection (d) and who has neither voted in favor
31 of the merger or consolidation nor consented thereto in writing pursuant to
32 K.S.A. 17-6518, and amendments thereto, shall be entitled to an appraisal
33 by the district court of the fair value of the stockholder's shares of stock
34 under the circumstances described in subsections (b) and (c). As used in
35 this section, the word "stockholder" means a holder of record of stock in a
36 corporation; the words "stock" and "share" mean and include what is
37 ordinarily meant by those words; and the words "depository receipt" mean
38 a receipt or other instrument issued by a depository representing an interest
39 in one or more shares, or fractions thereof, solely of stock of a corporation,
40 which stock is deposited with the depository.

41 (b) Appraisal rights shall be available for the shares of any class or
42 series of stock of a constituent corporation in a merger or consolidation to
43 be effected pursuant to K.S.A. 17-6701, and amendments thereto, other

1 than a merger effected pursuant to K.S.A. 17-6701(g), and amendments
2 thereto, and, subject to subsection (b)(3), K.S.A. 17-7601(h), 17-6702, 17-
3 6705, 17-6706, 17-6707 and 17-6708, and amendments thereto:

4 (1) *Except as expressly provided in section 3, and amendments*
5 *thereto*, no appraisal rights under this section shall be available for the
6 shares of any class or series of stock, which stock, or depository receipts in
7 respect thereof, at the record date fixed to determine the stockholders
8 entitled to receive notice of the meeting of stockholders to act upon the
9 agreement of merger or consolidation, were either: (A) Listed on a national
10 securities exchange; or (B) held of record by more than 2,000 holders,
11 except that no appraisal rights shall be available for any shares of stock of
12 the constituent corporation surviving a merger if the merger did not require
13 for its approval the vote of the stockholders of the surviving corporation as
14 provided in K.S.A. 17-6701(f), and amendments thereto.

15 (2) Notwithstanding subsection (b)(1), appraisal rights under this
16 section shall be available for the shares of any class or series of stock of a
17 constituent corporation if the holders thereof are required by the terms of
18 an agreement of merger or consolidation pursuant to K.S.A. 17-6701, 17-
19 6702, 17-6705, 17-6706, 17-6707 and 17-6708, and amendments thereto,
20 to accept for such stock anything except:

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

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

28 (C) cash in lieu of fractional shares or fractional depository receipts
29 described in subparagraphs (A) and (B); or

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

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

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

1 *consolidation," and the word "corporation" substituted for the words*
2 *"constituent corporation" or "surviving or resulting corporation."*

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

11 (d) Appraisal rights shall be perfected as follows:

12 (1) If a proposed merger or consolidation for which appraisal rights
13 are provided under this section is to be submitted for approval at a meeting
14 of stockholders, the corporation, not less than 20 days prior to the meeting,
15 shall notify each of its stockholders who was such on the record date for
16 notice of such meeting, or such members who received notice in
17 accordance with K.S.A. 17-6705, and amendments thereto, with respect to
18 shares for which appraisal rights are available pursuant to subsection (b) or
19 (c) that appraisal rights are available for any or all of the shares of the
20 constituent corporations, and shall include in such notice a copy of this
21 section and, if one of the constituent corporations is a nonstock
22 corporation, a copy of K.S.A. 2016 Supp. 17-6014, and amendments
23 thereto. Each stockholder electing to demand the appraisal of such
24 stockholder's shares shall deliver to the corporation, before the taking of
25 the vote on the merger or consolidation, a written demand for appraisal of
26 such stockholder's shares. Such demand will be sufficient if it reasonably
27 informs the corporation of the identity of the stockholder and that the
28 stockholder intends thereby to demand the appraisal of such stockholder's
29 shares. A proxy or vote against the merger or consolidation shall not
30 constitute such a demand. A stockholder electing to take such action must
31 do so by a separate written demand as herein provided. Within 10 days
32 after the effective date of such merger or consolidation, the surviving or
33 resulting corporation shall notify each stockholder of each constituent
34 corporation who has complied with this subsection and has not voted in
35 favor of or consented to the merger or consolidation of the date that the
36 merger or consolidation has become effective; or

37 (2) If the merger or consolidation was approved pursuant to K.S.A.
38 17-6518, 17-6701(h) or 17-6703, and amendments thereto, then, either a
39 constituent corporation before the effective date of the merger or
40 consolidation or the surviving or resulting corporation within 10 days
41 thereafter shall notify each of the holders of any class or series of stock of
42 such constituent corporation who are entitled to appraisal rights of the
43 approval of the merger or consolidation and that appraisal rights are

1 available for any or all shares of such class or series of stock of such
2 constituent corporation, and shall include in such notice a copy of this
3 section and, if one of the constituent corporations is a nonstock
4 corporation, a copy of K.S.A. 2016 Supp. 17-6014, and amendments
5 thereto. Such notice may, and, if given on or after the effective date of the
6 merger or consolidation, shall, also notify such stockholders of the
7 effective date of the merger or consolidation. Any stockholder entitled to
8 appraisal rights may, within 20 days after the date of mailing of such
9 notice or, in the case of a merger approved pursuant to K.S.A. 17-6701(h),
10 and amendments thereto, within the later of the consummation of the
11 tender or exchange offer contemplated by K.S.A. 17-6701(h), and
12 amendments thereto, and 20 days after the date of mailing of such notice,
13 demand in writing from the surviving or resulting corporation the appraisal
14 of such holder's shares. Such demand will be sufficient if it reasonably
15 informs the corporation of the identity of the stockholder and that the
16 stockholder intends thereby to demand the appraisal of such holder's
17 shares. If such notice did not notify stockholders of the effective date of
18 the merger or consolidation, either: (A) Each such constituent corporation
19 shall send a second notice before the effective date of the merger or
20 consolidation notifying each of the holders of any class or series of stock
21 of such constituent corporation that are entitled to appraisal rights of the
22 effective date of the merger or consolidation; or (B) the surviving or
23 resulting corporation shall send such a second notice to all such holders on
24 or within 10 days after such effective date; provided, however, that if such
25 second notice is sent more than 20 days following the sending of the first
26 notice or, in the case of a merger approved pursuant to K.S.A. 17-6701(h),
27 and amendments thereto, later than the later of the consummation of the
28 tender or exchange offer contemplated by K.S.A. 17-6701(h), and
29 amendments thereto, and 20 days following the sending of the first notice,
30 such second notice need only be sent to each stockholder who is entitled to
31 appraisal rights and who has demanded appraisal of such holder's shares in
32 accordance with this subsection. An affidavit of the secretary or assistant
33 secretary or of the transfer agent of the corporation that is required to give
34 either notice that such notice has been given shall, in the absence of fraud,
35 be prima facie evidence of the facts stated therein. For purposes of
36 determining the stockholders entitled to receive either notice, each
37 constituent corporation may fix, in advance, a record date that shall be not
38 more than 10 days prior to the date the notice is given, provided, that if the
39 notice is given on or after the effective date of the merger or consolidation,
40 the record date shall be such effective date. If no record date is fixed and
41 the notice is given prior to the effective date, the record date shall be the
42 close of business on the day next preceding the day on which the notice is
43 given.

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

28 (f) Upon the filing of any such petition by a stockholder, service of a
29 copy thereof shall be made upon the surviving or resulting corporation,
30 which shall within 20 days after such service file in the office of the clerk
31 of the court in which the petition was filed a duly verified list containing
32 the names and addresses of all stockholders who have demanded payment
33 for their shares and with whom agreements as to the value of their shares
34 have not been reached by the surviving or resulting corporation. If the
35 petition shall be filed by the surviving or resulting corporation, the petition
36 shall be accompanied by such a duly verified list. The clerk of the court, if
37 so ordered by the court, shall give notice of the time and place fixed for
38 the hearing of such petition by registered or certified mail to the surviving
39 or resulting corporation and to the stockholders shown on the list at the
40 addresses therein stated. Such notice shall also be given by one or more
41 publications at least one week before the day of the hearing, in a
42 newspaper of general circulation published in the county in which the
43 court is located or such publication as the court deems advisable. The

1 forms of the notices by mail and by publication shall be approved by the
2 court, and the costs thereof shall be borne by the surviving or resulting
3 corporation.

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

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

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

1 of this state or of any state.

2 (j) The costs of the proceeding may be determined by the court and
3 taxed upon the parties as the court deems equitable in the circumstances.
4 Upon application of a stockholder, the court may order all or a portion of
5 the expenses incurred by any stockholder in connection with the appraisal
6 proceeding, including, without limitation, reasonable attorney fees and the
7 fees and expenses of experts, to be charged pro rata against the value of all
8 the shares entitled to an appraisal.

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

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

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

38 (a) For-profit filings:

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

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

43 (3) close corporation articles of incorporation as set forth in K.S.A.

- 1 17-6426, 17-7201, 17-7202 and 17-7203, and amendments thereto;
- 2 (4) *public benefit corporation articles of incorporation as set forth in*
- 3 *section 2, and amendments thereto;*
- 4 (5) certificate of validation as set forth in K.S.A. 2016 Supp. 17-
- 5 6428, and amendments thereto;
- 6 ~~(5)~~(6) foreign for-profit application for authority as set forth in
- 7 K.S.A. 2016 Supp. 17-7931 and K.S.A. 17-7307 through 17-7510, and
- 8 amendments thereto;
- 9 ~~(6)~~(7) for-profit annual report as set forth in K.S.A. 17-7503 and 17-
- 10 7505, and amendments thereto;
- 11 ~~(7)~~(8) professional association annual report as set forth in K.S.A. 17-
- 12 2718, and amendments thereto;
- 13 ~~(8)~~(9) for-profit certificate of amendment as set forth in K.S.A. 17-
- 14 6003, 17-6401, 17-6601, 17-6602 and 17-6603, and amendments thereto;
- 15 ~~(9)~~(10) amendment to professional associations as set forth in K.S.A.
- 16 17-2709, and amendments thereto;
- 17 ~~(10)~~(11) foreign for-profit corporation certificate of amendment as set
- 18 forth in K.S.A. 17-7302, and amendments thereto;
- 19 ~~(11)~~(12) restated articles of incorporation as set forth in K.S.A. 17-
- 20 6605, and amendments thereto;
- 21 ~~(12)~~(13) change of registered office or resident agent as set forth in
- 22 sections K.S.A. 2016 Supp. 17-7926, 17-7927, 17-7928 and 17-7929, and
- 23 amendments thereto;
- 24 ~~(13)~~(14) for-profit certificate of correction as set forth in K.S.A. 2016
- 25 Supp. 17-7912, and amendments thereto;
- 26 ~~(14)~~(15) mergers as set forth in K.S.A. 17-6701 through 17-6708, and
- 27 amendments thereto;
- 28 ~~(15)~~(16) foreign mergers as set forth in K.S.A. 17-7302, and
- 29 amendments thereto;
- 30 ~~(16)~~(17) certificate of amendment or termination of merger as set
- 31 forth in K.S.A. 17-6701, and amendments thereto;
- 32 ~~(17)~~(18) foreign corporation merger as set forth in K.S.A. 17-7302,
- 33 and amendments thereto;
- 34 ~~(18)~~(19) certificate of reinstatement as set forth in K.S.A. 17-7002,
- 35 and amendments thereto;
- 36 ~~(19)~~(20) certificate of dissolution prior to commencing business as set
- 37 forth in K.S.A. 17-6803, and amendments thereto;
- 38 ~~(20)~~(21) certificate of dissolution by stockholder's meeting as set
- 39 forth in K.S.A. 17-6804, and amendments thereto;
- 40 ~~(21)~~(22) certificate of dissolution by written consent as set forth in
- 41 K.S.A. 17-6804, and amendments thereto;
- 42 ~~(22)~~(23) foreign certificate of cancellation as set forth in K.S.A. 2016
- 43 Supp. 17-7936, and amendments thereto; and

1 ~~(23)~~(24) certificate of revocation of dissolution as set forth in K.S.A.
2 17-7001, and amendments thereto.

3 (b) Not-for-profit filings:

4 (1) Not-for-profit articles of incorporation as set forth in K.S.A. 17-
5 6002, and amendments thereto;

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

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

10 (4) not-for-profit certificate of amendment as set forth in K.S.A. 17-
11 6602, and amendments thereto;

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

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

17 (7) not-for-profit certificate of reinstatement as set forth in K.S.A. 17-
18 7002, and amendments thereto; and

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

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

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

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

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

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

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

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

38 (3) *the designation "PBC"; or*

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

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

43 Sec. 15. This act shall take effect and be in force from and after its

- 1 publication in the statute book.