AN ACT concerning the Kansas general corporation code; relating to public benefit corporations; amending K.S.A. 2015 Supp. 17-7903 and 17-7919 and repealing the existing sections.

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

New Section 1. Sections 1 through 9, and amendments thereto, shall 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 this act in the manner prescribed in this act, it shall be subject in all respects to the provisions of the Kansas general corporation code, except to the extent this act imposes 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 this act 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. 2015 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.

New Sec. 3. (a) Notwithstanding any other provisions of this act, a corporation that is not a public benefit corporation, may not, without the
approval of 2/3 of the outstanding stock of the corporation entitled to vote thereon:

(1) Amend its articles of incorporation to include a provision authorized by 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, or in the case of a nonstock corporation, prior to the time that it has members.

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

(1) (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, shall be entitled to an appraisal by the district court of the fair value of the stockholder's shares of stock, except as set forth in subsection (e).

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

(1) Amend its articles of incorporation to delete or amend a provision authorized by section 2(a)(1) or section 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) Any stockholder of a corporation that is a public benefit corporation that holds shares of stock of such corporation immediately
prior to the effective time of:
(1) (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, shall be entitled to an appraisal by the district
court of the fair value of the stockholder's shares of stock, except as set
forth in subsection (e).
(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 this act. 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 this act.
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 this article.

(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 and 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.

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

New Sec. 9. Sections 1 through 9 shall be part of and supplemental to the Kansas general corporation code, K.S.A. 17-6001 et seq., and amendments thereto.
Sec. 10. K.S.A. 2015 Supp. 17-7903 is hereby amended to read as follows: 17-7903. (a) The following documents related to corporations shall be filed with the secretary of state:

(a) For-profit filings:
   (A) For-profit articles of incorporation as set forth in K.S.A. 17-6002, and amendments thereto;
   (B) professional association articles of incorporation as set forth in K.S.A. 17-2709, 17-2711 and 17-6002, and amendments thereto;
   (C) close corporation articles of incorporation as set forth in K.S.A. 17-6426, 17-7201, 17-7202 and 17-7203, and amendments thereto;
   (D) public benefit corporation articles of incorporation as set forth in section 1, and amendments thereto;
   (E) foreign for-profit application for authority as set forth in K.S.A. 2015 Supp. 17-7931 and K.S.A. 17-7307 through 17-7510, and amendments thereto;
   (F) for-profit annual report as set forth in K.S.A. 17-7503 and 17-7505, and amendments thereto;
   (G) professional association annual report as set forth in K.S.A. 17-2718, and amendments thereto;
   (H) 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;
   (I) amendment to professional associations as set forth in K.S.A. 17-2709, and amendments thereto;
   (J) foreign for-profit corporation certificate of amendment as set forth in K.S.A. 17-7302, and amendments thereto;
   (K) restated articles of incorporation as set forth in K.S.A. 17-6605, and amendments thereto;
   (L) change of registered office or resident agent as set forth in sections K.S.A. 2015 Supp. 17-7926, 17-7927, 17-7928 and 17-7929, and amendments thereto;
   (M) for-profit certificate of correction as set forth in K.S.A. 2015 Supp. 17-7912, and amendments thereto;
   (N) mergers as set forth in K.S.A. 17-6701 through 17-6708, and amendments thereto;
   (O) foreign mergers as set forth in K.S.A. 17-7302, and amendments thereto;
   (P) certificate of amendment or termination of merger as set forth in K.S.A. 17-6701, and amendments thereto;
   (Q) foreign corporation merger as set forth in K.S.A. 17-7302, and amendments thereto;
   (R) certificate of reinstatement as set forth in K.S.A. 17-7002, and amendments thereto;
   (S) certificate of dissolution prior to commencing business as set forth in K.S.A.
forth in K.S.A. 17-6803, and amendments thereto;
(Ω) (20) certificate of dissolution by stockholder's meeting as set forth
in K.S.A. 17-6804, and amendments thereto;
(Ω) (21) certificate of dissolution by written consent as set forth in
K.S.A. 17-6804, and amendments thereto;
(Ω) (22) foreign certificate of cancellation as set forth in K.S.A. 2015
Supp. 17-7936, and amendments thereto; and
(Ω) (23) certificate of revocation of dissolution as set forth in K.S.A.
17-7001, and amendments thereto.
(b) Not-for-profit filings:
(A) (1) Not-for-profit articles of incorporation as set forth in K.S.A.
17-6002, and amendments thereto;
(Ω) (2) foreign not-for-profit application for authority as set forth in
K.S.A. 2015 Supp. 17-7931, and amendments thereto;
(Ω) (3) not-for-profit annual report as set forth in K.S.A. 17-7504,
and amendments thereto;
(Ω) (4) not-for-profit certificate of amendment as set forth in K.S.A.
17-6602, and amendments thereto;
(Ω) (5) not-for-profit certificate of correction as set forth in K.S.A.
2015 Supp. 17-7912, and amendments thereto;
(Ω) (6) not-for-profit change of registered office or resident agent as
set forth in K.S.A. 2015 Supp. 17-7926, 17-7927, 17-7928 and 17-7929,
and amendments thereto;
(Ω) (7) not-for-profit certificate of reinstatement as set forth in K.S.A.
17-7002, and amendments thereto; and
(Ω) (8) certificate of dissolution as set forth in K.S.A. 17-6803, 17-
6804 and 17-6805, and amendments thereto.
(b) This section shall take effect on and after January 1, 2015.
Sec. 11. K.S.A. 2015 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, 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:
(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.

(d) This section shall take effect on and after January 1, 2015.

Sec. 12. K.S.A. 2015 Supp. 17-7903 and 17-7919 are hereby repealed.

Sec. 13. This act shall take effect and be in force from and after its publication in the statute book.