

## HOUSE BILL No. 2650

By Committee on Commerce, Labor and Economic Development

2-12

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1 AN ACT concerning benefit corporations.  
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3 *Be it enacted by the Legislature of the State of Kansas:*

4 Section 1. (a) Sections 1 through 14, and amendments thereto, shall  
5 be applicable to all benefit corporations.

6 (b) The existence of a provision of this act shall not by itself create an  
7 implication that a contrary or different rule of law is applicable to a  
8 business corporation that is not a benefit corporation. This act shall not  
9 affect a statute or rule of law that is applicable to a business corporation  
10 that is not a benefit corporation.

11 (c) Except as otherwise provided in this act, the Kansas general  
12 corporation code shall be generally applicable to all benefit corporations. A  
13 benefit corporation may be subject simultaneously to this act and other  
14 articles of chapter 17 of the Kansas Statutes Annotated, and amendments  
15 thereto, specifically including articles 15, 23, 27, 59 and 72 of chapter 17  
16 of the Kansas Statutes Annotated, and amendments thereto. Whenever  
17 there is a conflict between any provision of this act and any other  
18 provision of the Kansas general corporation code, including articles 15, 23,  
19 27, 59 and 72, and amendments thereto, the provisions of this act shall  
20 control.

21 (d) No provision of the articles of incorporation or bylaws of a  
22 benefit corporation may limit, be inconsistent with or supersede any  
23 provision of this act.

24 Sec. 2. As used in this section 1 through 14, and amendments thereto:

25 (a) "Benefit corporation" means a business corporation:

26 (1) That has elected to become subject to this act; and

27 (2) which has not been terminated.

28 (b) "Benefit director" means either:

29 (1) The director designated as the benefit director of a benefit  
30 corporation under section 8, and amendments thereto; or

31 (2) a person with one or more of the powers, duties or rights of a  
32 benefit director to the extent provided in the articles of incorporation under  
33 subsection (f) of section 8, and amendments thereto.

34 (c) "Benefit enforcement proceeding" means any claim or action or  
35 proceeding for:

36 (1) Failure of a benefit corporation to pursue or create general public

1 benefit or a specific public benefit purpose set forth in its articles; or  
2 (2) violation of any obligation, duty or standard of conduct under this  
3 act.

4 (d) "Benefit officer" means the individual designated as the benefit  
5 officer of a benefit corporation under section 10, and amendments thereto.

6 (e) "General public benefit" means a material positive impact on  
7 society and the environment, taken as a whole, assessed against a third-  
8 party standard, from the business and operations of a benefit corporation.

9 (f) "Independent" means having no material relationship with a  
10 benefit corporation or a subsidiary of the benefit corporation. Serving as  
11 benefit director or benefit officer makes an individual independent. A  
12 material relationship between an individual and a benefit corporation or  
13 any of its subsidiaries will be conclusively presumed to exist if any of the  
14 following apply:

15 (1) The individual is, or within the last three years has been, an  
16 employee other than a benefit officer of the benefit corporation or a  
17 subsidiary thereof;

18 (2) an immediate family member of the individual is, or within the  
19 last three years has been, an executive officer other than a benefit officer  
20 of the benefit corporation or a subsidiary thereof; or

21 (3) there is beneficial or record ownership of 5% or more of the  
22 outstanding shares of the benefit corporation, calculated as if all  
23 outstanding rights to acquire equity interests in the benefit corporation had  
24 been exercised, by:

25 (A) The individual; or

26 (B) an entity:

27 (i) Of which the individual is a director, an officer or a manager; or

28 (ii) in which the individual owns beneficially or of record 5% or more  
29 of the outstanding equity interests, calculated as if all outstanding rights to  
30 acquire equity interests in the entity had been exercised.

31 (g) "Minimum status vote" means:

32 (1) In the case of a business corporation, in addition to any other  
33 required approval or vote, the satisfaction of the following conditions:

34 (A) The shareholders of every class or series shall be entitled to vote  
35 as a class on the corporate action regardless of a limitation stated in the  
36 articles of incorporation or bylaws on the voting rights of any class or  
37 series; and

38 (B) the corporate action must be approved by vote of the shareholders  
39 of each class or series entitled to cast at least  $\frac{2}{3}$  of the votes that all  
40 shareholders of the class or series are entitled to cast on the action.

41 (2) In the case of a domestic entity other than a business corporation,  
42 in addition to any other required approval, vote or consent, the satisfaction  
43 of the following conditions:

1 (A) The holders of every class or series of equity interest in the entity  
2 that are entitled to receive a distribution of any kind from the entity shall  
3 be entitled to vote on or consent to the action regardless of any otherwise  
4 applicable limitation on the voting or consent rights of any class or series;  
5 and

6 (B) the action must be approved by vote or consent of the holders  
7 described in subparagraph (A) entitled to cast at least  $\frac{2}{3}$  of the votes or  
8 consents that all of those holders are entitled to cast on the action.

9 (h) "Publicly traded corporation" means a business corporation that  
10 has shares listed on a national securities exchange or traded in a market  
11 maintained by one or more members of a national securities association.

12 (i) "Specific public benefit" includes:

13 (1) Providing low-income or underserved individuals or communities  
14 with beneficial products or services;

15 (2) promoting economic opportunity for individuals or communities  
16 beyond the creation of jobs in the normal course of business;

17 (3) protecting or restoring the environment;

18 (4) improving human health;

19 (5) promoting the arts, sciences or advancement of knowledge;

20 (6) increasing the flow of capital to entities with a purpose to benefit  
21 society or the environment; and

22 (7) conferring any other particular benefit on society or the  
23 environment.

24 (j) "Subsidiary" means, in relation to a person, an entity in which the  
25 person owns beneficially or of record 50% or more of the outstanding  
26 equity interests, calculated as if all outstanding rights to acquire equity  
27 interests in the entity had been exercised.

28 (k) "Third-party standard" means a recognized standard for defining,  
29 reporting and assessing corporate social and environmental performance  
30 that is:

31 (1) Comprehensive because it assesses the effect of the business and  
32 its operations upon the interests listed in subsections (a)(1)(B), (C), (D)  
33 and (E) of section 7, and amendments thereto;

34 (2) developed by an entity that is not controlled by the benefit  
35 corporation;

36 (3) credible because it is developed by an entity that both:

37 (A) Has access to necessary expertise to assess overall corporate  
38 social and environmental performance; and

39 (B) uses a balanced multi-stakeholder approach to develop the  
40 standard, including a reasonable public comment period; and

41 (4) transparent because the following information is publicly  
42 available:

43 (A) About the standard:

1 (i) The criteria considered when measuring the overall social and  
2 environmental performance of a business; and

3 (ii) the relative weightings, if any, of those criteria.

4 (B) about the development and revision of the standard:

5 (i) The identity of the directors, officers, material owners, and the  
6 governing body of the entity that developed and controls revisions to the  
7 standard;

8 (ii) the process by which revisions to the standard and changes to the  
9 membership of the governing body are made; and

10 (iii) an accounting of the revenue and sources of financial support for  
11 the entity, with sufficient detail to disclose any relationships that could  
12 reasonably be considered to present a potential conflict of interest.

13 Sec. 3. A benefit corporation shall be incorporated in accordance with  
14 article 60 of the Kansas general corporation code, and amendments  
15 thereto, but its articles of incorporation must also state that it is a benefit  
16 corporation.

17 Sec. 4. (a) An existing business corporation may become a benefit  
18 corporation under this act by amending its articles of incorporation so that  
19 they contain, in addition to the requirements of K.S.A. 17-6002, and  
20 amendments thereto, a statement that the corporation is a benefit  
21 corporation. In order to be effective, the amendment must be adopted by at  
22 least the minimum status vote.

23 (b) (1) Except as provided in subsection (b)(2), if a domestic entity  
24 that is not a benefit corporation is a party to a merger, consolidation or  
25 conversion or the exchanging entity in an interest exchange and the  
26 surviving, new or resulting entity in the merger, consolidation, conversion  
27 or interest exchange is to be a benefit corporation, the agreement of  
28 merger, consolidation, conversion or interest exchange must be approved  
29 by the domestic entity by at least the minimum status vote.

30 (2) Subsection (b)(1) does not apply in the case of a corporation that  
31 is a party to a merger if the shareholders of the corporation are not entitled  
32 to vote on the merger pursuant to K.S.A. 17-6703, and amendments  
33 thereto.

34 Sec. 5. (a) A benefit corporation may terminate its status as such and  
35 cease to be subject to this act by amending its articles of incorporation to  
36 delete the provision required by sections 3 or 4, and amendments thereto,  
37 to be stated in the articles of a benefit corporation. In order to be effective,  
38 the amendment must be adopted by at least the minimum status vote.

39 (b) (1) Except as provided in subsection (b)(2), if an agreement of  
40 merger, consolidation, conversion or interest exchange would have the  
41 effect of terminating the status of a business corporation as a benefit  
42 corporation, the agreement or transaction must be approved by at least the  
43 minimum status vote in order to be effective.

1 (2) Subsection (b)(1) does not apply in the case of a corporation that  
2 is a party to a merger if the shareholders of the corporation are not entitled  
3 to vote on the merger pursuant to K.S.A. 17-6703, and amendments  
4 thereto.

5 (3) Any sale, lease, exchange or other disposition of all or  
6 substantially all of the assets of a benefit corporation, unless the  
7 transaction is in the usual and regular course of business, shall not be  
8 effective unless the transaction is approved by at least the minimum status  
9 vote.

10 Sec. 6. (a) A benefit corporation shall have a purpose of creating  
11 general public benefit. This purpose is in addition to its purpose under  
12 subsection (b) of K.S.A. 17-6001, and amendments thereto.

13 (b) The articles of incorporation of a benefit corporation may identify  
14 one or more specific public benefits, which are the purpose of the benefit  
15 corporation to create, in addition to its purposes under subsection (b) of  
16 K.S.A. 17-6001, and amendments thereto, and subsection (a). The  
17 identification of a specific public benefit under this subsection does not  
18 limit the purpose of a benefit corporation to create general public benefit  
19 under subsection (a).

20 (c) The creation of general public benefit and specific public benefit  
21 under subsections (a) and (b) is in the best interests of the benefit  
22 corporation.

23 (d) A benefit corporation may amend its articles of incorporation to  
24 add, amend or delete the identification of a specific public benefit that is  
25 the purpose of the benefit corporation to create. In order to be effective,  
26 the amendment must be adopted by at least the minimum status vote.

27 (e) A professional corporation that is a benefit corporation does not  
28 violate K.S.A. 17-2710, and amendments thereto, by having the purpose to  
29 create general public benefit or a specific public benefit.

30 Sec. 7. (a) In discharging the duties of their respective positions and  
31 in considering the best interests of the benefit corporation, the board of  
32 directors, committees of the board and individual directors of a benefit  
33 corporation:

34 (1) Shall consider the effects of any action or inaction upon:

35 (A) The shareholders of the benefit corporation;

36 (B) the employees and work force of the benefit corporation, its  
37 subsidiaries and its suppliers;

38 (C) the interests of customers as beneficiaries of the general public  
39 benefit or specific public benefit purpose of the benefit corporation;

40 (D) community and societal factors, including those of each  
41 community in which offices or facilities of the benefit corporation, its  
42 subsidiaries or its suppliers are located;

43 (E) the local and global environment;

1 (F) the short-term and long-term interests of the benefit corporation,  
2 including benefits that may accrue to the benefit corporation from its long-  
3 term plans and the possibility that these interests may be best served by the  
4 continued independence of the benefit corporation; and

5 (G) the ability of the benefit corporation to accomplish its general  
6 public benefit purpose and any specific public benefit purpose; and

7 (2) may consider other pertinent factors or the interests of any other  
8 group that they deem appropriate; but

9 (3) need not give priority to a particular interest or factor referred to  
10 in paragraph (1) or (2) over any other interest or factor, unless the benefit  
11 corporation has stated in its articles of incorporation its intention to give  
12 priority to certain interests or factors related to its accomplishment of its  
13 general public benefit purpose or of a specific public benefit purpose  
14 identified in its articles.

15 (b) The consideration of interests and factors in the manner required  
16 by subsection (a) does not constitute a violation of the duties of directors  
17 generally.

18 (c) Except as provided in the articles of incorporation or bylaws, a  
19 director is not personally liable for monetary damages for:

20 (1) Any action or inaction in the course of performing the duties of a  
21 director under subsection (a) if the director performed the duties of office  
22 in compliance with the duties of directors generally and under this section;  
23 or

24 (2) failure of the benefit corporation to pursue or create general  
25 public benefit or specific public benefit.

26 (d) A director does not have a duty to a person that is a beneficiary of  
27 the general public benefit purpose or a specific public benefit purpose of a  
28 benefit corporation arising from the status of the person as a beneficiary.

29 (e) A director who makes a business judgment in good faith fulfills  
30 the duty under this section if the director:

31 (1) Is not interested in the subject of the business judgment;

32 (2) is informed with respect to the subject of the business judgment to  
33 the extent the director reasonably believes to be appropriate under the  
34 circumstances; and

35 (3) rationally believes that the business judgment is in the best  
36 interests of the benefit corporation.

37 Sec. 8. (a) The board of directors of a benefit corporation that is a  
38 publicly traded corporation shall, and the board of any other benefit  
39 corporation may, include a director, who:

40 (1) Shall be designated the benefit director; and

41 (2) shall have, in addition to the powers, duties, rights and immunities  
42 of the other directors of the benefit corporation, the powers, duties, rights  
43 and immunities provided in this act.

1 (b) The benefit director shall be elected, and may be removed, in the  
2 manner provided by article 63 of chapter 17 of the Kansas Statutes  
3 Annotated, and amendments thereto. Except as provided in subsections (f)  
4 and (g), the benefit director shall be an individual who is independent. The  
5 benefit director may serve as the benefit officer at the same time as serving  
6 as the benefit director. The articles of incorporation or bylaws of a benefit  
7 corporation may prescribe additional qualifications of the benefit director  
8 not inconsistent with this subsection.

9 (c) The benefit director shall prepare, and the benefit corporation  
10 shall include in the annual benefit report to shareholders required by  
11 section 12, and amendments thereto, the opinion of the benefit director on  
12 all of the following:

13 (1) Whether the benefit corporation acted in accordance with its  
14 general public benefit purpose and any specific public benefit purpose in  
15 all material respects during the period covered by the report;

16 (2) whether the directors and officers complied with subsection (a) of  
17 section 7, and amendments thereto, and subsection (a) of section 9, and  
18 amendments thereto, respectively; and

19 (3) if, in the opinion of the benefit director, the benefit corporation or  
20 its directors or officers failed to act or comply in the manner described in  
21 paragraphs (1) and (2), a description of the ways in which the benefit  
22 corporation or its directors or officers failed to act or comply.

23 (d) The act or inaction of an individual in the capacity of a benefit  
24 director shall constitute for all purposes an act or inaction of that  
25 individual in the capacity of a director of the benefit corporation.

26 (e) Regardless of whether the articles of incorporation or bylaws of a  
27 benefit corporation include a provision eliminating or limiting the personal  
28 liability of directors authorized by subsection (b)(8) of K.S.A. 17-6002,  
29 and amendments thereto, a benefit director shall not be personally liable  
30 for an act or omission in the capacity of a benefit director unless the act or  
31 omission constitutes self-dealing, willful misconduct or a knowing  
32 violation of law.

33 (f)(1) The articles of incorporation or bylaws of a benefit corporation  
34 must provide that the persons or shareholders who perform the duties of  
35 the board of directors include a person with the powers, duties, rights and  
36 immunities of a benefit director if either of the following applies:

37 (A) The articles of incorporation or bylaws of the benefit corporation  
38 provide that the powers and duties conferred or imposed upon the board of  
39 directors shall be exercised or performed by a person other than the  
40 directors under subsection (b)(1) of K.S.A. 17-6002, and amendments  
41 thereto, and article 72 of chapter 17 of the Kansas Statutes Annotated, and  
42 amendments thereto; or

43 (B) the articles of incorporation or bylaws of a statutory close

1 corporation that is a benefit corporation provide that the business and  
2 affairs of the corporation shall be managed by or under the direction of the  
3 shareholders.

4 (2) A person that exercises one or more of the powers, duties or rights  
5 of a benefit director under this subsection:

6 (A) Does not need to be independent of the benefit corporation;

7 (B) shall have the immunities of a benefit director;

8 (C) may share the powers, duties and rights of a benefit director with  
9 one or more other persons; and

10 (D) shall not be subject to the procedures for election or removal of  
11 directors in article 63 of chapter 17 of the Kansas Statutes Annotated, and  
12 amendments thereto, unless:

13 (i) The person is also a director of the benefit corporation; or

14 (ii) the articles or bylaws make those procedures applicable.

15 (g) The benefit director of a professional corporation does not need to  
16 be independent.

17 Sec. 9. (a) Each officer of a benefit corporation shall consider the  
18 interests and factors described in subsection (a) of section 7, and  
19 amendments thereto, in the manner provided in that subsection if:

20 (1) The officer has discretion to act with respect to a matter; and

21 (2) it reasonably appears to the officer that the matter may have a  
22 material effect on the creation by the benefit corporation of general public  
23 benefit or a specific public benefit identified in the articles of  
24 incorporation of the benefit corporation.

25 (b) The consideration of interests and factors in the manner described  
26 in subsection (a) shall not constitute a violation of the duties of an officer.

27 (c) Except as provided in the articles of incorporation or bylaws, an  
28 officer is not personally liable for monetary damages for:

29 (1) An action or inaction as an officer in the course of performing the  
30 duties of an officer under subsection (a) if the officer performed the duties  
31 of the position in compliance with the duties of an officer and this section;  
32 or

33 (2) failure of the benefit corporation to pursue or create general  
34 public benefit or specific public benefit.

35 (d) An officer does not have a duty to a person that is a beneficiary of  
36 the general public benefit purpose or a specific public benefit purpose of a  
37 benefit corporation arising from the status of the person as a beneficiary.

38 (e) An officer who makes a business judgment in good faith fulfills  
39 the duty under this section if the officer:

40 (1) Is not interested in the subject of the business judgment;

41 (2) is informed with respect to the subject of the business judgment to  
42 the extent the officer reasonably believes to be appropriate under the  
43 circumstances; and



1 (3) rationally believes that the business judgment is in the best  
2 interests of the benefit corporation.

3 Sec. 10. (a) A benefit corporation may have an officer designated the  
4 benefit officer.

5 (b) A benefit officer shall have:

6 (1) The powers and duties relating to the purpose of the corporation  
7 to create general public benefit or specific public benefit provided:

8 (A) By the bylaws; or

9 (B) absent controlling provisions in the bylaws, by resolutions or  
10 orders of the board of directors; and

11 (2) the duty to prepare the benefit report required by section 12, and  
12 amendments thereto.

13 Sec. 11. (a) Except in a benefit enforcement proceeding, no person  
14 may bring an action or assert a claim against a benefit corporation or its  
15 directors or officers with respect to:

16 (1) Failure to pursue or create general public benefit or a specific  
17 public benefit set forth in its articles of incorporation; or

18 (2) a violation of an obligation, duty, or standard of conduct under  
19 this act.

20 (b) A benefit corporation shall not be liable for monetary damages  
21 under this act for any failure of the benefit corporation to pursue or create  
22 general public benefit or a specific public benefit.

23 (c) A benefit enforcement proceeding may be commenced or  
24 maintained only:

25 (1) Directly by the benefit corporation; or

26 (2) derivatively by:

27 (A) A person or group of persons that owned beneficially or of record  
28 at least 2% of the total number of shares of a class or series outstanding at  
29 the time of the act or omission complained of;

30 (B) a director;

31 (C) a person or group of persons that owned beneficially or of record  
32 5% or more of the outstanding equity interests in an entity of which the  
33 benefit corporation is a subsidiary at the time of the act or omission  
34 complained of; or

35 (D) other persons as specified in the articles of incorporation or  
36 bylaws of the benefit corporation.

37 (d) For purposes of this section, a person is the beneficial owner of  
38 shares or equity interests if the shares or equity interests are held in a  
39 voting trust or by a nominee on behalf of the beneficial owner.

40 Sec. 12. (a) A benefit corporation shall prepare an annual benefit  
41 report including all of the following:

42 (1) A narrative description of:

43 (A) The ways in which the benefit corporation pursued general public

- 1 benefit during the year and the extent to which general public benefit was  
2 created;
- 3 (B) the ways in which the benefit corporation pursued a specific  
4 public benefit that the articles of incorporation state it is the purpose of the  
5 benefit corporation to create;
- 6 (C) the extent to which that specific public benefit was created;
- 7 (D) any circumstances that have hindered the creation by the benefit  
8 corporation of general public benefit or specific public benefit; and
- 9 (E) the process and rationale for selecting or changing the third-party  
10 standard used to prepare the benefit report;
- 11 (2) an assessment of the overall social and environmental  
12 performance of the benefit corporation against a third-party standard:
- 13 (A) Applied consistently with any application of that standard in prior  
14 benefit reports; or
- 15 (B) accompanied by an explanation of the reasons for:
- 16 (i) Any inconsistent application; or
- 17 (ii) the change to that standard from the one used in the immediately  
18 prior report;
- 19 (3) the name of the benefit director and the benefit officer, if any, and  
20 the address to which correspondence to each of them may be directed;
- 21 (4) the compensation paid by the benefit corporation during the year  
22 to each director in the capacity of a director;
- 23 (5) the statement of the benefit director described in subsection (c) of  
24 section 8, and amendments thereto;
- 25 (6) a statement of any connection between the organization that  
26 established the third-party standard, or its directors, officers or any holder  
27 of 5% or more of the governance interests in the organization, and the  
28 benefit corporation or its directors, officers or any holder of 5% or more of  
29 the outstanding shares of the benefit corporation, including any financial  
30 or governance relationship which might materially affect the credibility of  
31 the use of the third-party standard; and
- 32 (7) if the benefit corporation has dispensed with, or restricted the  
33 discretion or powers of the board of directors, a description of:
- 34 (A) The persons that exercise the powers, duties and rights and who  
35 have the immunities of the board of directors; and
- 36 (B) the benefit director, as required by subsection (f) of section 8, and  
37 amendments thereto.
- 38 (b) If, during the year covered by a benefit report, a benefit director  
39 resigned from or refused to stand for reelection to the position of benefit  
40 director, or was removed from the position of benefit director, and the  
41 benefit director furnished the benefit corporation with any written  
42 correspondence concerning the circumstances surrounding the resignation,  
43 refusal or removal, the benefit report shall include that correspondence as

1 an exhibit.

2 (c) Neither the benefit report nor the assessment of the performance  
3 of the benefit corporation in the benefit report required by subsection (a)  
4 (2) need to be audited or certified by a third party.

5 Sec. 13. (a) A benefit corporation shall send its annual benefit report  
6 to each shareholder on the earlier of:

7 (1) 120 days following the end of the fiscal year of the benefit  
8 corporation; or

9 (2) the same time that the benefit corporation delivers any other  
10 annual report to its shareholders.

11 (b) A benefit corporation shall post all of its benefit reports on the  
12 public portion of its internet website, if any; but the compensation paid to  
13 directors and financial or proprietary information included in the benefit  
14 reports may be omitted from the benefit reports as posted.

15 (c) If a benefit corporation does not have an internet website, the  
16 benefit corporation shall provide a copy of its most recent benefit report,  
17 without charge, to any person that requests a copy, but the compensation  
18 paid to directors and financial or proprietary information included in the  
19 benefit report may be omitted from the copy of the benefit report provided.

20 (d) Concurrently with the delivery of the benefit report to  
21 shareholders under subsection (c), the benefit corporation shall deliver a  
22 copy of the benefit report to the secretary of state for filing, but the  
23 compensation paid to directors and financial or proprietary information  
24 included in the benefit report may be omitted from the benefit report as  
25 delivered to the secretary of state. The secretary of state shall charge a fee  
26 of \$20 for filing a benefit report.

27 Sec. 14. Sections 1 through 14, and amendments thereto, shall be part  
28 of and supplemental to the Kansas general corporation code.

29 Sec. 15. This act shall take effect and be in force from and after its  
30 publication in the statute book.