

1 **MODEL BENEFIT CORPORATION LEGISLATION**
2 **With Explanatory Comments**

3
4 **[Chapter] __**
5 **Benefit Corporations**

6
7 Subchapter

- 8 1. Preliminary Provisions
9 2. Corporate Purposes
10 3. Accountability
11 4. Transparency

12
13 **Subchapter 1**
14 **Preliminary Provisions**

15
16 Section

- 17 101. Application and effect of chapter.
18 102. Definitions.
19 103. Formation of benefit corporations.
20 104. Election of status.
21 105. Termination of status.

22
23 **§ 101. Application and effect of chapter.**

24
25 **(a) General rule.** – This [*chapter*] shall be applicable to all benefit corporations.

26
27 **(b) Application of business corporation law generally.** – The existence of a
28 provision of this [*chapter*] shall not of itself create an implication that a contrary or
29 different rule of law is applicable to a business corporation that is not a benefit corporation.
30 This [*chapter*] shall not affect a statute or rule of law that is applicable to a business
31 corporation that is not a benefit corporation.

32
33 **(c) Laws applicable.** – Except as otherwise provided in this [*chapter*], [*the*
34 *business corporation law*] shall be generally applicable to all benefit corporations. The
35 specific provisions of this [*chapter*] shall control over the general provisions of [*the*
36 *business corporation law*]. A benefit corporation may be simultaneously subject to this
37 [*chapter*] and one or more other [*statutes that provide for the incorporation of a specific*
38 *type of business corporation, such as a professional corporation*].

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40 **(d) Organic records.** – A provision of the articles or bylaws of a benefit
41 corporation may not relax, be inconsistent with or supersede a provision of this [*chapter*].

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Comment:

This chapter authorizes the organization of a form of business corporation that offers entrepreneurs and investors the option to build, and invest in, businesses that operate in a socially and environmentally responsible manner. Enforcement of those responsibilities comes not from governmental oversight, but rather from new provisions on transparency and accountability included in this chapter.

The last sentence of subsection (c) makes clear that if a state provides for the incorporation of specialized types of business corporations, such as statutory close corporations, insurance corporations, or professional corporations, those corporations may also be benefit corporations. In the case of a professional corporation, section 201(e) provides a special rule that eliminates any conflict between this chapter and the requirement found in many professional corporation laws that limit the purposes or business of a professional corporation to providing a particular type of professional service.

As a result of subsection (d), a corporation that elects to be subject to this chapter will be subject to all of the provisions of the chapter and will not be able to vary their application to the corporation.

The term “benefit corporation” used in this section is defined in section 102.

§ 102. Definitions.

(a) Defined terms. – The following words and phrases when used in this [chapter] shall have the meanings given to them in this section unless the context clearly indicates otherwise:

“Benefit corporation.” A business corporation:

- (1) which has elected to become subject to this [chapter]; and
- (2) the status of which as a benefit corporation has not been terminated under section 105.

“Benefit director.” Either:

- [(1)] the director designated as the benefit director of a benefit corporation under section 302[; or
- (2) a person with one or more of the powers, duties or rights of a benefit director to the extent provided in the bylaws under section 302].

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“Benefit enforcement proceeding.” Any claim or action for:

(1) failure of a benefit corporation to pursue or create general public benefit or a specific public benefit purpose set forth in its articles; or

(2) violation of any obligation, duty or standard of conduct under this [chapter].

“Benefit officer.” The individual designated as the benefit officer of a benefit corporation under section 304.

“General public benefit.” A material positive impact on society and the environment, taken as a whole, assessed against a third-party standard, from the business and operations of a benefit corporation.

“Independent.” Having no material relationship with a benefit corporation or a subsidiary of the benefit corporation. Serving as benefit director or benefit officer does not make a person not independent. A material relationship between a person and a benefit corporation or any of its subsidiaries will be conclusively presumed to exist if any of the following apply:

(1) The person is, or has been within the last three years, an employee other than a benefit officer of the benefit corporation or a subsidiary of the benefit corporation.

(2) An immediate family member of the person is, or has been within the last three years, an executive officer other than a benefit officer of the benefit corporation or its subsidiary.

(3) There is beneficial or record ownership of 5% or more of the outstanding shares of the benefit corporation by:

(i) the person; or

(ii) an association:

(A) of which the person is a director, an officer or a manager; or

(B) in which the person owns beneficially or of record 5% or more of the outstanding equity interests.

“Minimum status vote.”

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

132
133 (i) The shareholders of every class or series shall be entitled to vote on
134 the corporate action regardless of a limitation stated in the articles of incorporation or
135 bylaws on the voting rights of any class or series.

136
137 (ii) The corporate action must be approved by vote of the shareholders
138 of each class or series entitled to cast at least two-thirds of the votes that all shareholders of
139 the class or series are entitled to cast on the action.

140
141 [(2) *In the case of a domestic entity other than a business corporation, in*
142 *addition to any other required approval, vote or consent, the satisfaction of the following*
143 *conditions:*

144
145 (i) *The holders of every class or series of equity interest in the entity*
146 *that are entitled to receive a distribution of any kind from the entity shall be entitled to vote*
147 *on or consent to the action regardless of any otherwise applicable limitation on the voting*
148 *or consent rights of any class or series.*

149
150 (ii) *The action must be approved by vote or consent of the holders*
151 *described in subparagraph (i) entitled to cast at least two-thirds of the votes or consents*
152 *that all of those holders are entitled to cast on the action.]*

153
154 “Specific public benefit.” Includes:

155
156 (1) providing low-income or underserved individuals or communities with
157 beneficial products or services;

158
159 (2) promoting economic opportunity for individuals or communities beyond
160 the creation of jobs in the normal course of business;

161
162 (3) preserving the environment;

163
164 (4) improving human health;

165
166 (5) promoting the arts, sciences or advancement of knowledge;

167
168 (6) increasing the flow of capital to entities with a public benefit purpose; and

169
170 (7) conferring any other particular benefit on society or the environment.

171
172 “Subsidiary.” In relation to a person, an association in which the person owns
173 beneficially or of record 50% or more of the outstanding equity interests.

174
175 “Third-party standard.” A recognized standard for defining, reporting and assessing
176 corporate social and environmental performance which is:

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- (1) Comprehensive in that it assesses the effect of the business and its operations upon the interests listed in section 301(a)(1)(ii), (iii), (iv) and (v).
- (2) Developed by an organization that is independent of the benefit corporation and satisfies the following requirements:
 - (i) Not more than one-third of the members of the governing body of the organization are representatives of any of the following:
 - (A) An association of businesses operating in a specific industry the performance of whose members is measured by the standard.
 - (B) Businesses from a specific industry or an association of businesses in that industry.
 - (C) Business whose performance is assessed against the standard.
 - (ii) The organization is not materially financed by an association or business described in subparagraph (i).
- (3) Credible because the standard is developed by a person that both:
 - (i) Has access to necessary expertise to assess overall corporate social and environmental performance.
 - (ii) Uses a balanced multistakeholder approach, including a public comment period of at least 30 days to develop the standard.
- (4) Transparent because the following information is publicly available:
 - (i) About the standard:
 - (A) The criteria considered when measuring the overall social and environmental performance of a business.
 - (B) The relative weightings of those criteria.
 - (ii) About the development and revision of the standard:
 - (A) The identity of the directors, officers, material owners and the governing body of the organization that developed and controls revisions to the standard.
 - (B) The process by which revisions to the standard and changes to the membership of the governing body are made.

222
223 (C) An accounting of the sources of financial support for the
224 organization, with sufficient detail to disclose any relationships that could reasonably be
225 considered to present a potential conflict of interest.

226
227 (b) **Computation of ownership.** – For purposes of the definitions of “independent”
228 and “subsidiary” in subsection (a), a percentage of ownership in an entity shall be
229 calculated as if all outstanding rights to acquire equity interests in the association had been
230 exercised.

231
232 **Comment:**

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234 **“Benefit corporation.”** The provisions of this chapter apply to a business
235 corporation while it has the status of a benefit corporation because its articles contain a
236 statement that it is a benefit corporation. If that statement is deleted under section 105(a),
237 the corporation will cease to be a benefit corporation immediately upon the effectiveness
238 of the deletion.

239
240 **“Benefit director.”** Paragraph (2) of this definition should be used in states that
241 permit a corporation to provide that the functions of the board of directors will be
242 discharged by persons other than directors. *See* section 302(f). *See also* section 401(a)(8)
243 which requires a benefit corporation that has so varied its governance to describe the
244 alternative arrangements in its annual benefit report.

245
246 **“Benefit enforcement proceeding.”** This definition not only describes the action
247 that may be brought under section 305, but it also has the effect of excluding other actions
248 against a benefit corporation and its directors and officers because section 305(a)(1)
249 provides that “no person may bring an action or assert a claim against a benefit corporation
250 or its directors or officers” with respect to violation of the provisions of this chapter.

251
252 The obligations that may be enforced through a benefit enforcement proceeding
253 include the obligations of a benefit corporation under section 401(c) to post its benefit
254 reports on its Internet website and to supply copies of its benefit report if it does not have
255 an Internet website. In the case of a failure to provide a copy of a benefit report, a benefit
256 enforcement proceeding to enforce that obligation may only be brought by the persons
257 listed in section 305 and not by the person requesting the copy of the report.

258
259 **“General public benefit.”** By requiring that the impact of a business on society and
260 the environment be looked at “as a whole,” the concept of general public benefit requires
261 consideration of all of the effects of the business on society and the environment. What is
262 involved in creating general public benefit is informed by section 301(a) which lists the
263 specific interests that the directors of a benefit corporation are required to consider.

264
265 **“Minimum status vote.”** An amendment of the articles or a fundamental change
266 that has the effect of changing the status of a corporation so that it either becomes a benefit

267 corporation or ceases to be a benefit corporation must be approved by the minimum status
268 vote. See sections 104 and 105. The purpose of requiring a two-thirds vote under this
269 chapter is to ensure that there is broader shareholder support for an action. This definition
270 will not be needed in states that require a supermajority vote for amendments of the articles
271 or fundamental changes.

272
273 The second paragraph of the definition extends its policy to other forms of entities so
274 that, for example, a merger of a limited liability company into a benefit corporation must
275 be approved by the members of the limited liability company by at least a two-thirds vote.
276 The second paragraph should be omitted by those states that require a supermajority vote
277 by the owners of an unincorporated entity to approve a fundamental change. See, e.g.,
278 Uniform Limited Liability Company Act (2006) § 1003, which requires a unanimous vote
279 by the members of a limited liability company to approve a merger.

280
281 The two-thirds vote required by the definition is in addition to any other vote
282 required in the case of any particular corporation or other form of association. If the
283 articles of a corporation were to require, for example, an 80% supermajority vote to
284 approve a merger, a 70% vote to approve a merger of the corporation into a benefit
285 corporation would be sufficient to satisfy the requirement that the merger be approved by
286 the minimum status vote but would not be sufficient for valid approval of the merger.

287
288 **“Specific public benefit.”** Every benefit corporation has the purpose under section
289 201(a) of creating general public benefit. A benefit corporation may also elect to pursue
290 one or more specific public benefit purposes. Since the creation of specific public benefit
291 is optional, paragraph (7) of this definition permits a benefit corporation to identify a
292 specific public benefit that is different from those listed in paragraphs (1) through (6).

293
294 **“Third-party standard.”** The requirement in section 401 that a benefit corporation
295 prepare an annual benefit report that assesses its performance in creating general public
296 benefit against a third-party standard provides an important protection against the abuse of
297 benefit corporation status. The performance of a regular business corporation is measured
298 by the financial statements that the corporation prepares. But the performance of a benefit
299 corporation in creating general or specific public benefit will not be readily apparent from
300 those financial statements. The annual benefit report is intended to permit an evaluation of
301 that performance so that the shareholders can judge how the directors have discharged their
302 responsibility to manage the corporation and thus whether they should be retained in
303 office. The annual benefit report is also intended to reduce “greenwashing” (the
304 phenomenon of businesses seeking the cachet of being more environmentally and socially
305 responsible than they actually are) by giving consumers and the general public a means of
306 judging whether a business is living up to its claimed status as a benefit corporation.

307 308 309 **§ 103. Formation of benefit corporations.**

310
311 A benefit corporation must be formed in accordance with [*cite incorporation*

312 *provisions of the business corporation law*], but its articles must also state that it is a
313 benefit corporation.

314

315 **Comment:**

316

317 This section provides for how a corporation that is being newly formed may elect to
318 be a benefit corporation. Existing corporations may become benefit corporations in the
319 manner provided in section 104.

320

321 This chapter only applies to domestic business corporations. A foreign business
322 corporation that has a status in its home jurisdiction similar to the status of a benefit
323 corporation under this chapter is not subject to this chapter and has the status simply of a
324 foreign business corporation for purposes of the state’s business corporation law.

325

326 The term “benefit corporation” used in this section is defined in section 102.

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328

329 **§ 104. Election of status.**

330

331 (a) **Amendment.** – An existing business corporation may become a benefit
332 corporation under this chapter by amending its articles so that they contain, in addition to
333 the requirements of [*cite section of the business corporation law on the required contents*
334 *of articles of incorporation*], a statement that the corporation is a benefit corporation. In
335 order to be effective, the amendment must be adopted by the minimum status vote.

336

337 (b) **Fundamental transactions.** –

338

339 (1) This subsection applies if all of the following subparagraphs apply:

340

341 (i) An association that is not a benefit corporation is:

342

343 (A) a party to a merger, consolidation or division; or

344

345 (B) the exchanging association in a share exchange.

346

347 (ii) The surviving, new or any resulting association in the merger,
348 consolidation, division or share exchange is to be a benefit corporation.

349

350 (2) In order to be effective, a plan of merger, consolidation, division or share
351 exchange subject to this subsection must be adopted by the minimum status vote.

352

353 **Comment:**

354

355 This section provides the procedures for an existing corporation to become a benefit
356 corporation. A corporation that is being newly formed may become a benefit corporations

357 in the manner provided in section 103. Subsection (a) applies to a business corporation
358 that is directly electing to be a benefit corporation by amending its articles of
359 incorporation. Subsection (b) applies when a corporation is becoming a benefit
360 corporation indirectly in the context of a fundamental transaction. In both cases, the
361 change to benefit corporation status must be approved by at least the minimum status vote.
362

363 Subsection (b) also applies to an entity that is not a corporation when the entity is a
364 party to a transaction that will result in a benefit corporation. In those situations, a
365 supermajority vote of the owners of the entity is required by subsection (b).
366

367 *See* section 201(d) with respect to changing the identification of a specific public
368 benefit that it is the purpose of a benefit corporation to pursue.
369

370 The following terms used in this section are defined in section 102:

371 “benefit corporation”

372 “minimum status vote”
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376 § 105. Termination of status.

377
378 (a) **Amendment.** – A benefit corporation may terminate its status as such and
379 cease to be subject to this chapter by amending its articles to delete the provision required
380 by section 104 to be stated in the articles of a benefit corporation. In order to be effective,
381 the amendment must be adopted by the minimum status vote.
382

383 (b) **Fundamental transactions.** – If a plan would have the effect of terminating the
384 status of a business corporation as a benefit corporation, in order to be effective, the plan
385 must be adopted by the minimum status vote. Any sale, lease, exchange or other
386 disposition of all or substantially all of the assets of a benefit corporation, unless the
387 transaction is in the usual and regular course of business, shall not be effective unless the
388 transaction is approved by at least the minimum status vote.
389

390 Comment:

391
392 This section provides the procedures for a benefit corporation to terminate
393 voluntarily its status as a benefit corporation. As with an election of benefit corporation
394 status under section 104, the termination may be accomplished either directly by an
395 amendment of the articles or indirectly through a fundamental transaction.
396

397 The last sentence of subsection (b) provides a special rule for a sale of all or
398 substantially all of the assets of a benefit corporation. Such a transaction will not result in
399 a termination of the status of the corporation as a benefit corporation, but will have
400 effectively the same result since it will terminate the operations of the business. Thus it
401 was considered appropriate to require approval of a sale of assets by the minimum status

402 vote. Whether a sale of assets is in the usual and regular course will be determined under
403 the same standards as apply to that question under the state’s business corporation law.
404 *See, e.g., Model Business Corporation Act §§ 12.01 and 12.02.*
405

406 The following terms used in this section are defined in section 102:

407
408 “benefit corporation”
409 “minimum status vote”
410
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412 Subchapter 2 413 Corporate Purposes

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415 Section
416 201. Corporate purposes.
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418 § 201. Corporate purposes.

419
420 (a) **General public benefit purpose.** – A benefit corporation shall have a purpose
421 of creating general public benefit. This purpose is in addition to its purpose under [*cite*
422 *section of the business corporation law on the purpose of business corporations*].
423

424 (b) **Optional specific public benefit purpose.** – The articles of a benefit
425 corporation may identify one or more specific public benefits that it is the purpose of the
426 benefit corporation to create in addition to its purposes under [*cite section of the business*
427 *corporation law on the purpose of business corporations*] and subsection (a). The
428 identification of a specific public benefit under this subsection does not limit the obligation
429 of a benefit corporation under subsection (a).
430

431 (c) **Effect of purposes.** – The creation of general public benefit and specific public
432 benefit under subsections (a) and (b) is in the best interests of the benefit corporation.
433

434 (d) **Amendment.** – A benefit corporation may amend its articles to add, amend or
435 delete the identification of a specific public benefit that it is the purpose of the benefit
436 corporation to create. In order to be effective, the amendment must be adopted by the
437 minimum status vote.
438

439 (e) **Professional corporations.** – A professional corporation that is a benefit
440 corporation does not violate [*cite section of professional corporation law, if any, that*
441 *restricts the business in which a professional corporation may engage*] by having the
442 purpose to create general public benefit or a specific public benefit.
443

444 **Comment:**

445
446 Every benefit corporation has the corporate purpose of creating general public

447 benefit. A benefit corporation may also elect to pursue specific public benefits under
448 subsection (b).

449
450 Subsection (c) confirms that pursuing general and specific public benefit is in the
451 best interests of the benefit corporation. Because the basic duty of a director is to act in a
452 manner that the director reasonably believes to be in the best interests of the corporation,
453 decisions by the board of directors that promote the creation of general or specific public
454 benefit will satisfy the requirement to act in the best interests of the corporation. If an
455 ordinary business corporation includes in its articles of incorporation a statement of a
456 specific purpose, it is by definition in the best interests of the corporation for the directors
457 to pursue that purpose. Thus the rule in subsection (c) would be the case in any event, but
458 has been stated expressly in subsection (c) because of the importance to the concept of a
459 benefit corporation of the creation of public benefit.

460
461 Some professional corporation statutes provide that a professional corporation may
462 not engage in any business other than rendering the professional service for which it was
463 specifically incorporated. Subsection (e) makes clear that such a limitation will not
464 interfere with a professional corporation electing to be a benefit corporation. In such a
465 case, the professional corporation (such as a law firm, accounting firm, or medical
466 practice) will be limited to providing the professional services for which it was
467 incorporated, but it will be able to provide those services in a manner that creates general
468 public benefit or a specific public benefit (for example, a medical practice that focuses on
469 providing care for low-income individuals).

470
471 The following terms used in this section are defined in section 102:

472
473 “benefit corporation”
474 “general public benefit”
475 “minimum status vote”
476 “specific public benefit”

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479 **Subchapter 3** 480 **Accountability**

481

482 Section
483 301. Standard of conduct for directors.
484 302. Benefit director.
485 303. Standard of conduct for officers.
486 304. Benefit officer.
487 305. Right of action.

488

489 **§ 301. Standard of conduct for directors.**

490

491 **(a) Consideration of interests.** – In discharging the duties of their respective
492 positions and in considering the best interests of the benefit corporation, the board of
493 directors, committees of the board and individual directors of a benefit corporation:
494

495 (1) shall consider the effects of any action or inaction upon:

496 (i) the shareholders of the benefit corporation;

497 (ii) the employees and work force of the benefit corporation, its
498 subsidiaries and its suppliers;

499 (iii) the interests of customers as beneficiaries of the general public
500 benefit or specific public benefit purposes of the benefit corporation;

501 (iv) community and societal factors, including those of each community
502 in which offices or facilities of the benefit corporation, its subsidiaries or its suppliers are
503 located;

504 (v) the local and global environment;

505 (vi) the short-term and long-term interests of the benefit corporation,
506 including benefits that may accrue to the benefit corporation from its long-term plans and
507 the possibility that these interests may be best served by the continued independence of the
508 benefit corporation; and

509 (vii) the ability of the benefit corporation to accomplish its general public
510 benefit purpose and any specific public benefit purpose; and

511 (2) may consider:

512 [(i) *cite constituencies provision of the business corporation law if it*
513 *refers to constituencies not listed above; and*

514 (ii)] other pertinent factors or the interests of any other group that they
515 deem appropriate; but

516 (3) need not give priority to the interests of a particular person or group
517 referred to in paragraph (1) or (2) over the interests of any other person or group unless the
518 benefit corporation has stated in its articles its intention to give priority to certain interests
519 related to its accomplishment of its general public benefit purpose or of a specific public
520 benefit purpose identified in its articles.

521 **(b) Coordination with other provisions of law.** –The consideration of interests
522 and factors in the manner required by subsection (a):
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536 (1) does not constitute a violation of [*cite provision of the business*
537 *corporation law on the duties of directors generally*] [; and

538
539 (2) is in addition to the ability of directors to consider interests and factors as
540 provided in [*cite constituencies provision of the business corporation law*]].

541
542 (c) **Exoneration from personal liability generally.** – A director is not personally
543 liable for monetary damages for:

544
545 (1) any action taken as a director if the director performed the duties of office
546 in compliance with [*cite provision of the business corporation law on the duties of*
547 *directors generally*]; or

548
549 (2) failure of the benefit corporation to create general public benefit or
550 specific public benefit.

551
552 (d) **Limitation on standing.** – A director does not have a duty to a person that is a
553 beneficiary of the general public benefit purpose or a specific public benefit purpose of a
554 benefit corporation arising from the status of the person as a beneficiary.

555
556 **Comment:**

557
558 This section is at the heart of what it means to be a benefit corporation. By requiring
559 the consideration of interests of constituencies other than the shareholders, the section
560 rejects the holdings in *Dodge v. Ford*, 170 N.W. 668 (Mich. 1919), and *eBay Domestic*
561 *Holdings, Inc. v. Newmark*, 16 A.3d 1 (Del. Ch. 2010), that directors must maximize the
562 financial value of a corporation. In a state that has adopted a “constituency statute,”
563 directors are authorized to consider the interests of corporate constituencies other than the
564 shareholders, but the directors are not *required* to do so. Subsection (a) makes it
565 mandatory for the directors of a benefit corporation to consider the interests and factors
566 that they would otherwise simply be permitted to consider in their discretion under the
567 typical constituency statute.

568
569 Subsection (d) negates any duty of directors to non-shareholder constituents. *But see*
570 section 305(b) which permits a benefit corporation to provide in its articles that an
571 identified category of persons may bring a benefit enforcement proceeding. If a benefit
572 corporation were to do so, the identified non-shareholder constituents would be able to
573 allege a breach of duty by the directors under this chapter for failing to pursue or create
574 general or specific public benefit, but subsection (d) would prevent those constituents from
575 alleging a breach of duty to them.

576
577 The following terms used in this section are defined in section 102:

578
579 “benefit corporation”

580 “benefit enforcement proceeding”

581 “general public benefit”
582 “specific public benefit”
583 “subsidiary”
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585

586 **§ 302. Benefit director.**

587
588 (a) **General rule.** – The board of directors of a benefit corporation shall include
589 one director, who:

590
591 (1) shall be designated the benefit director; and

592
593 (2) shall have, in addition to the powers, duties, rights and immunities of the
594 other directors of the benefit corporation, the powers, duties, rights and immunities
595 provided in this subchapter.
596

597 (b) **Election, removal and qualifications.** – The benefit director shall be elected,
598 and may be removed, in the manner provided by [*cite provisions of the business*
599 *corporation law on the election and removal of directors generally*], and shall be an
600 individual who is independent. The benefit director may serve as the benefit officer at the
601 same time as serving as the benefit director. The articles or bylaws of a benefit corporation
602 may prescribe additional qualifications of the benefit director not inconsistent with this
603 subsection.
604

605 (c) **Annual compliance statement.** – The benefit director shall prepare, and the
606 benefit corporation shall include in the annual benefit report to shareholders required by
607 section 401, the opinion of the benefit director on all of the following:
608

609 (1) Whether the benefit corporation acted in accordance with its general
610 public benefit purpose and any specific public benefit purpose in all material respects
611 during the period covered by the report.
612

613 (2) Whether the directors and officers complied with sections 301(a) and
614 303(a), respectively.
615

616 (3) If, in the opinion of the benefit director, the benefit corporation or its
617 directors or officers failed to comply with paragraph (2), a description of the ways in which
618 the benefit corporation or its directors or officers failed to comply.
619

620 (d) **Status of actions.** – The act or inaction of an individual in the capacity of a
621 benefit director shall constitute for all purposes an act or inaction of that individual in the
622 capacity of a director of the benefit corporation.
623

624 (e) **Exoneration from personal liability.** – Regardless of whether the bylaws of a
625 benefit corporation include a provision eliminating or limiting the personal liability of

626 directors authorized by [cite section of the business corporation law permitting
627 exoneration of directors], a benefit director shall not be personally liable for an act or
628 omission in the capacity of a benefit director unless the act or omission constitutes self-
629 dealing, willful misconduct or a knowing violation of law.

630
631 **[(f) Alternative governance arrangements. –**

632
633 (1) *The bylaws of a benefit corporation must provide that the persons or*
634 *shareholders who perform the duties of the board of directors include a person with the*
635 *powers, duties, rights and immunities of a benefit director if either of the following*
636 *applies:*

637
638 (i) *The bylaws of a benefit corporation provide that the powers and*
639 *duties conferred or imposed upon the board of directors shall be exercised or performed*
640 *by a person other than the directors under [cite section, if any, of the business corporation*
641 *law permitting alternative governance arrangements].*

642
643 (ii) *The bylaws of a statutory close corporation that is a benefit*
644 *corporation provide that the business and affairs of the corporation shall be managed by*
645 *or under the direction of the shareholders.*

646
647 (2) *A person that exercises one or more of the powers, duties or rights of a*
648 *benefit director under this subsection:*

649
650 (i) *does not need to be independent of the benefit corporation;*

651
652 (ii) *shall have the immunities of a benefit director;*

653
654 (iii) *may share the powers, duties and rights of a benefit director with*
655 *one or more other persons; and*

656
657 (iv) *shall not be subject to the procedures for election or removal of*
658 *directors in [cite applicable provisions of the business corporation law] unless:*

659
660 (A) *the person is also a director of the benefit corporation; or*

661
662 (B) *the bylaws make those procedures applicable.]*

663
664 **Comment:**

665
666 The statement of the benefit director required by subsection (c) is an important part
667 of the transparency required under this chapter. The perspective of the benefit director on
668 whether the corporation has been successful in creating general or specific public benefit
669 will be an important source of information for the shareholders as to whether the directors
670 have adequately discharged their stewardship of the benefit corporation and its resources.

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Subsection (d) makes clear that the actions of a benefit director are actions of a director of the benefit corporation and are subject to the same standards as actions of directors generally.

The wording of subsection (e) should be conformed to the provision of the state’s business corporation law that permits the shareholders to adopt a provision of the articles or bylaws exonerating directors from liability for breach of duty. But unlike existing exoneration provisions, subsection (e) does not require the benefit corporation to adopt an implementing provision in the articles or bylaws. Instead the liability shield provided by subsection (e) automatically applies to all benefit directors.

Subsection (f) should be adopted in those states that authorize a business corporation to vary the usual functions of the board of directors, either in the general business corporation law or, more typically, a statutory close corporation statute. If a benefit corporation chooses to vary the usual governance paradigm under one of those sections, subsection (f) explains how this section will apply to the corporation. See section 401(a)(8) which requires a benefit corporation that has so varied its governance to describe the alternative arrangements in its annual benefit report.

The following terms used in this section are defined in section 102:

- “benefit corporation”
- “benefit director”
- “benefit enforcement proceeding”
- “benefit officer”
- “general public benefit”
- “independent”
- “specific public benefit”

§ 303. Standard of conduct for officers.

(a) **General rule.** – Each officer of a benefit corporation shall consider the interests and factors described in section 301 in the manner provided in that subsection if:

- (1) the officer has discretion to act with respect to a matter; and
- (2) it reasonably appears to the officer that the matter may have a material effect on the creation by the benefit corporation of general public benefit or a specific public benefit identified in the articles of the benefit corporation.

(b) **Coordination with other provisions of law.** – The consideration of interests and factors in the manner described in subsection (a) shall not constitute a violation of [*cite provision of the business corporation law on the duties of officers*].

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(c) **Exoneration from personal liability.** – An officer is not personally liable for monetary damages for:

(1) an action or omission as an officer if the officer performed the duties of the position in compliance with [*cite provision of the business corporation law on the duties of officers*] and this section; or

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

(d) **Limitation on standing.** – An officer does not have a duty to a person that is a beneficiary of the general public benefit purpose or a specific public benefit purpose of a benefit corporation arising from the status of the person as a beneficiary.

Comment:

As an agent of the corporation, an officer is generally required to follow the instructions of his or her principal. But in those instances where an officer has discretion to act with a respect to a matter, subsection (a) requires the officer to consider the interests of the benefit corporation’s constituencies in the same manner as required of the directors by section 301.

This section applies to all of the officers of the benefit corporation and is not limited just to the benefit officer, if any, of the benefit corporation.

See the Comment to section 301(d) with respect to subsection (d).

The following terms used in this section are defined in section 102:

- “benefit corporation”
- “benefit enforcement proceeding”
- “benefit officer”
- “general public benefit”
- “specific public benefit”

§ 304. Benefit officer.

(a) **Designation.** – A benefit corporation may have an officer designated the benefit officer.

(b) **Functions.** – A benefit officer shall have:

- (1) the powers and duties relating to the purpose of the corporation to create

- 761 general public benefit or specific public benefit provided:
762
763 (i) by the bylaws; or
764
765 (ii) absent controlling provisions in the bylaws, by resolutions or orders
766 of the board of directors.
767
768 (2) the duty to prepare the benefit report required by section 401.
769

770 **Comment:**
771

772 The designation of a benefit officer is optional. But if a benefit officer is designated,
773 one of the duties of that officer will be to prepare the annual benefit report required by
774 section 401.
775

776 The following terms used in this section are defined in section 102:
777

- 778 “benefit corporation”
779 “benefit officer”
780 “general public benefit”
781 “specific public benefit”
782
783

784 **§ 305. Right of action.**
785

786 (a) **Limitations.** –
787

788 (1) Except in a benefit enforcement proceeding, no person may bring an
789 action or assert a claim against a benefit corporation or its directors or officers with respect
790 to:
791

792 (i) failure to pursue or create general public benefit or a specific public
793 benefit set forth in its articles; or
794

795 (ii) violation of a duty or standard of conduct under this [*chapter*].
796

797 (2) A benefit corporation shall not be liable for monetary damages under this
798 [*chapter*] for any failure of the benefit corporation to pursue or create general public
799 benefit or a specific public benefit.
800

801 (b) **Standing.** – A benefit enforcement proceeding may be commenced or
802 maintained only:
803

804 (1) directly by the benefit corporation; or
805

- 806 (2) derivatively by:
807
808 (i) a shareholder;
809
810 (ii) a director;
811
812 (iii) a person or group of persons that owns beneficially or of record 5%
813 or more of the equity interests in an entity of which the benefit corporation is a subsidiary;
814 or
815
816 (iv) other persons as specified in the articles or bylaws of the benefit
817 corporation.

818
819 **Comment:**

820
821 Standing in an action against the directors or officers of a business corporation that is
822 not a benefit corporation for breach of duty is limited in most states just to the corporation
823 or shareholders bringing a derivative suit. This section provides a similar limitation on
824 standing in actions to enforce this chapter, except that the grant of standing to a director or
825 5% shareholder of a parent association is new.

826
827 This section only applies to actions or claims relating to the duties of directors and
828 officers under this chapter, and the general and specific public benefit purposes of a benefit
829 corporation. Lawsuits for other breaches of duty, or for breach of contract by directors,
830 officers, or the benefit corporation are not subject to this section.

831
832 The following terms used in this section are defined in section 102:

- 833
834 “benefit corporation”
835 “benefit enforcement proceeding”
836 “general public benefit”
837 “specific public benefit”
838 “subsidiary”
839

840
841 **Subchapter 4**
842 **Transparency**

843
844 Section

845 401. Annual benefit report.

846
847 **§ 401. Annual benefit report.**

848
849 (a) **Contents.** – A benefit corporation shall prepare an annual benefit report
850 including all of the following:

- 851
852 (1) A narrative description of:
853
854 (i) The ways in which the benefit corporation pursued general public
855 benefit during the year and the extent to which general public benefit was created.
856
857 (ii) Both:
858
859 (A) the ways in which the benefit corporation pursued a specific
860 public benefit that the articles state it is the purpose of the benefit corporation to create;
861 and
862
863 (B) the extent to which that specific public benefit was created.
864
865 (iii) Any circumstances that have hindered the creation by the benefit
866 corporation of general public benefit or specific public benefit.
867
868 (iv) The process and rationale for selecting or changing the third-party
869 standard used to prepare the benefit report.
870
871 (2) An assessment of the overall social and environmental performance of the
872 benefit corporation against a third-party standard:
873
874 (i) applied consistently with any application of that standard in prior
875 benefit reports; or
876
877 (ii) accompanied by an explanation of the reasons for any inconsistent
878 application.
879
880 (3) The name of the benefit director and the benefit officer, if any, and the
881 address to which correspondence to each of them may be directed.
882
883 (4) The compensation paid by the benefit corporation during the year to each
884 director in the capacity of a director.
885
886 (5) The name of each person that owns 5% or more of the outstanding shares
887 of the benefit corporation either:
888
889 (i) beneficially, to the extent known to the benefit corporation without
890 independent investigation; or
891
892 (ii) of record.
893
894 (6) The statement of the benefit director described in section 302(c).
895

896 (7) A statement of any connection between the organization that established
897 the third-party standard, or its directors, officers or material owners, and the benefit
898 corporation or its directors, officers or material shareholders, including any financial or
899 governance relationship which might materially affect the credibility of the use of the
900 third-party standard.

901
902 [(8) *If the benefit corporation has dispensed with, or restricted the discretion*
903 *or powers of, the board of directors, a description of:*

904 (i) *the persons that exercise the powers, duties and rights and who have*
905 *the immunities of the board of directors; and*

906
907 (ii) *the benefit director, as required by section 302(e).]*

908
909 (b) **Timing of report.** – A benefit corporation shall annually send a benefit report
910 to each shareholder:

911
912 (1) within 120 days following the end of the fiscal year of the benefit
913 corporation; or

914
915 (2) at the same time that the benefit corporation delivers any other annual
916 report to its shareholders.

917
918 (c) **Internet website posting.** – A benefit corporation shall post all of its benefit
919 reports on the public portion of its Internet website, if any; but the compensation paid to
920 directors and financial or proprietary information included in the benefit reports may be
921 omitted from the benefit reports as posted.

922
923 (d) **Availability of copies.** – If a benefit corporation does not have an Internet
924 website, the benefit corporation shall provide a copy of its most recent benefit report,
925 without charge, to any person that requests a copy, but the compensation paid to directors
926 and financial or proprietary information included in the benefit report may be omitted from
927 the copy of the benefit report provided.

928
929 (e) **Filing of report.** –

930
931 (1) Concurrently with the delivery of the benefit report to shareholders under
932 subsection (b), the benefit corporation shall deliver a copy of the benefit report to the
933 department for filing, but the compensation paid to directors and financial or proprietary
934 information included in the benefit report may be omitted from the benefit report as
935 delivered to the department.

936
937 (2) The [Secretary of State] shall charge a fee of \$70 for filing a benefit
938 report.

941 **Comment:**

942

943 A benefit corporation may change from year to year the standard it uses under
944 subsection (a)(2) for assessing its performance. But if a benefit corporation uses the same
945 standard for assessing its performance in more than one year, the standard must either be
946 applied consistently or the benefit corporation must provide an explanation of the reasons
947 for any inconsistent use of the standard.

948

949 Subsection (a)(5) requires the disclosure of all record shareholders that own 5% or
950 more of the benefit corporation. The benefit corporation must also disclose in its annual
951 benefit report any beneficial owners of 5% or more that are known to the benefit
952 corporation, but it does not have an obligation to inquire as to the existence of any such
953 owners.

954

955 The following terms used in this section are defined in section 102:

956

957 “benefit corporation”

958 “benefit director”

959 “general public benefit”

960 “specific public benefit”

961 “third-party standard”