

SENATE BILL NO. 667

November 09, 2023, Introduced by Senators MCCANN, IRWIN, GEISS and BAYER and referred to the Committee on Finance, Insurance, and Consumer Protection.

A bill to amend 1972 PA 284, entitled "Business corporation act," by amending sections 105, 106, 131, 202, 211, 745, 746, and 762 (MCL 450.1105, 450.1106, 450.1131, 450.1202, 450.1211, 450.1745, 450.1746, and 450.1762), sections 105, 106, and 211 as amended by 2012 PA 569, sections 131, 202, 746, and 762 as amended by 2018 PA 85, and section 745 as added by 2008 PA 402, and by adding chapter 9A.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 105. (1) "Administrator" means the chief officer of the

1 department or ~~of~~ any other agency or department authorized by law
2 to administer this act, or ~~his or her~~ **the** designated representative
3 **of the chief officer.**

4 (2) "Articles of incorporation" includes any of the following:

5 (a) The original articles of incorporation or any other
6 instrument filed or issued under any statute to organize a domestic
7 or foreign corporation, as amended, supplemented, or restated by
8 certificates of amendment, merger, conversion, or consolidation or
9 other certificates or instruments filed or issued under any
10 statute.

11 (b) A special act or charter creating a domestic or foreign
12 corporation, as amended, supplemented, or restated.

13 (3) "Authorized shares" means shares of all classes that a
14 corporation is authorized to issue.

15 (4) **"Benefit corporation" means a domestic corporation that**
16 **meets the requirements for being a benefit corporation under**
17 **chapter 9A and has not terminated its status as a benefit**
18 **corporation under that chapter.**

19 (5) ~~(4)~~—"Board" means board of directors or other governing
20 board of a corporation.

21 (6) ~~(5)~~—"Bonds" includes secured and unsecured bonds,
22 debentures, and notes.

23 Sec. 106. (1) "Corporation" or "domestic corporation" means a
24 corporation formed under this act, or existing on January 1, 1973
25 and formed under any other statute of this state for a purpose for
26 which a corporation may be formed under this act. **The term includes**
27 **a benefit corporation.**

28 (2) "Department" means the department of licensing and
29 regulatory affairs.

1 (3) "Director" means a member of the board of a corporation.

2 (4) "Distribution" means a direct or indirect transfer of
3 money or other property, except the corporation's shares, or the
4 incurrence of indebtedness by the corporation to or for the benefit
5 of its shareholders in respect to the corporation's shares. A
6 distribution may be in the form of a dividend, a purchase,
7 redemption or other acquisition of shares, an issuance of
8 indebtedness, or any other declaration or payment to or for the
9 benefit of the shareholders.

10 (5) "Electronic transmission" or "electronically transmitted"
11 means any form of communication that meets all of the following:

12 (a) It does not directly involve the physical transmission of
13 paper.

14 (b) It creates a record that may be retained and retrieved by
15 the recipient.

16 (c) It may be directly reproduced in paper form by the
17 recipient through an automated process.

18 Sec. 131. (1) A document **that is** required or permitted to be
19 filed under this act ~~shall~~**must** be submitted by delivering the
20 document to the administrator together with the fees and
21 accompanying documents required by law. The administrator may
22 establish a procedure for accepting delivery of a document
23 submitted under this subsection by facsimile or other electronic
24 transmission. However, by December 31, 2006, the administrator
25 shall establish a procedure for accepting delivery of a document
26 submitted under this subsection by electronic mail or over the
27 internet. Beginning January 1, 2007, the administrator shall accept
28 delivery of documents submitted by electronic mail or over the
29 internet.

1 (2) If a document submitted under subsection (1), **other than**
2 **an annual benefit report prepared under section 961**, substantially
3 conforms to the requirements of this act, the administrator shall
4 endorse upon it the word "filed" with ~~his or her~~**the**
5 **administrator's** official title and the date of receipt and of
6 filing and shall file and index the document or a photostatic,
7 micrographic, photographic, optical disc media, or other reproduced
8 copy in ~~his or her~~**the administrator's** office. If requested at the
9 time of the delivery of the document to ~~his or her~~**the**
10 **administrator's** office, the administrator shall include the hour of
11 filing in the endorsement on the document.

12 (3) The administrator may return the original or a copy of a
13 document filed under subsection (2) to the person that submitted it
14 for filing. The administrator shall mark the filing date on the
15 copy or original before returning it or may provide proof of the
16 filing date to the person that submitted the document for filing in
17 another manner determined by the administrator.

18 (4) The records and files of the administrator relating to
19 domestic and foreign corporations ~~shall~~**must** be open to reasonable
20 inspection by the public. The administrator may maintain records or
21 files in their original form or may maintain records or files in
22 the form of reproductions ~~pursuant to~~**in accordance with** the
23 records reproduction act, 1992 PA 116, MCL 24.401 to 24.406, and
24 may destroy the originals of the reproduced documents.

25 (5) The administrator may make reproductions of any documents
26 filed under this act or any predecessor act ~~pursuant to~~**in**
27 **accordance with** the records reproduction act, 1992 PA 116, MCL
28 24.401 to 24.406, and may destroy the originals of the reproduced
29 documents. A reproduced copy of a document certified by the

1 administrator, including a copy sent by facsimile or other
2 electronic transmission, is considered an original document for all
3 purposes and is admissible in evidence in like manner as an
4 original document.

5 (6) Except as provided in section 806, a document filed under
6 subsection (2) is effective at the time it is endorsed unless a
7 subsequent effective time, not later than 90 days after the date of
8 delivery, is ~~set forth~~**stated** in the document.

9 (7) The administrator shall charge 1 of the following
10 nonrefundable fees if expedited filing of a document by the
11 administrator is requested and the administrator shall retain the
12 revenue collected under this subsection and the department shall
13 use it to carry out its duties required by law:

14 (a) For any filing that a person requests the administrator to
15 complete within 1 hour on the same day as the day of the request,
16 \$1,000.00. The department may establish a deadline by which a
17 person must submit a request for filing under this subdivision.

18 (b) For any filing that a person requests the administrator to
19 complete within 2 hours on the same day as the day of the request,
20 \$500.00. The department may establish a deadline by which a person
21 must submit a request for filing under this subdivision.

22 (c) Except for a filing request under subdivision (a) or (b),
23 for the filing of any formation or qualification document that a
24 person requests the administrator to complete on the same day as
25 the day of the request, \$100.00. The department may establish a
26 deadline by which a person must submit a request for filing under
27 this subdivision.

28 (d) Except for a filing request under subdivision (a) or (b),
29 for the filing of any other document concerning an existing

1 domestic corporation or a qualified foreign corporation that a
2 person requests the administrator to complete on the same day as
3 the day of the request, \$200.00. The department may establish a
4 deadline by which a person must submit a request for filing under
5 this subdivision.

6 (e) For the filing of any formation or qualification document
7 that a person requests the administrator to complete within 24
8 hours ~~of the time~~ **after** the administrator receives the request,
9 \$50.00.

10 (f) For the filing of any other document concerning an
11 existing domestic corporation or a qualified foreign corporation
12 that a person requests the administrator to complete within 24
13 hours ~~of the time~~ **after** the administrator receives the request,
14 \$100.00.

15 Sec. 202. The articles of incorporation ~~shall~~ **must** contain all
16 of the following:

17 (a) The name of the corporation.

18 (b) The purposes for which the corporation is formed. All of
19 the following apply for purposes of this subdivision:

20 (i) Except as otherwise provided in subparagraph (ii) or (iii),
21 it is a sufficient compliance with this subdivision to state
22 substantially, alone or with specifically enumerated purposes, that
23 the corporation may engage in any activity within the purposes for
24 which corporations may be formed under the business corporation
25 act, and all activities ~~shall~~ **must** by the statement be considered
26 within the purposes of the corporation, subject to expressed
27 limitations.

28 (ii) Any corporation that proposes to conduct educational
29 purposes shall state the purposes and shall comply with all

1 requirements of sections 170 to 177 of 1931 PA 327, MCL 450.170 to
2 450.177.

3 (iii) A professional corporation shall comply with section
4 283(2) and (3).

5 (iv) **The purposes of a benefit corporation must comply with**
6 **section 953, but a benefit corporation is not required to state its**
7 **general public benefit purpose in the articles of incorporation.**

8 (c) The aggregate number of shares that the corporation has
9 authority to issue.

10 (d) If the shares are, or are to be, divided into classes, or
11 into classes and series, the designation of each class and series,
12 the number of shares in each class and series, and a statement of
13 the relative rights, preferences and limitations of the shares of
14 each class and series, to the extent that the designations,
15 numbers, relative rights, preferences, and limitations have been
16 determined.

17 (e) If the shares are to be designated and issued in 1 or more
18 classes or series, a statement of any authority vested in the board
19 to designate and issue shares in 1 or more classes or series, and
20 to determine or change for any class or series its designation,
21 number of shares, relative rights, preferences and limitations.

22 (f) Except as otherwise provided in section 611(2)(c), the
23 street address, and the mailing address if different from the
24 street address, of the corporation's initial registered office and
25 the name of the corporation's initial resident agent at that
26 address.

27 (g) The names and addresses of the incorporators.

28 (h) The duration of the corporation if other than perpetual.

29 Sec. 211. **(1)** Except as **otherwise** provided in chapter 2A for a

1 professional corporation **and in subsection (2) for a benefit**
2 **corporation**, the corporate name of a domestic corporation ~~shall~~
3 **must** contain the word "corporation", "company", "incorporated", or
4 "limited", or ~~shall~~**must** contain 1 of the following abbreviations:
5 corp., co., inc., or ltd., with or without periods.

6 (2) **The corporate name of a benefit corporation may contain**
7 **the words "benefit corporation" or "benefit company" or contain the**
8 **initials "B.C.", with or without periods. A benefit corporation**
9 **that includes the words "benefit corporation" or "benefit company"**
10 **or contains the initials "B.C.", with or without periods, in its**
11 **corporate name does not have to comply with subsection (1).**

12 Sec. 745. (1) A domestic corporation, **except a benefit**
13 **corporation**, may convert into a business organization if all of the
14 following requirements are satisfied:

15 (a) The conversion is permitted by the law that will govern
16 the internal affairs of the business organization after conversion
17 and the surviving business organization complies with that law in
18 converting.

19 (b) Unless subdivision (d) applies, the board of the domestic
20 corporation proposing to convert adopts a plan of conversion that
21 includes all of the following:

22 (i) The name of the domestic corporation, the name of the
23 business organization into which the domestic corporation is
24 converting, the type of business organization into which the
25 domestic corporation is converting, identification of the statute
26 that will govern the internal affairs of the surviving business
27 organization, the street address of the surviving business
28 organization, the street address of the domestic corporation if
29 different from the street address of the surviving business

1 organization, and the principal place of business of the surviving
2 business organization.

3 (ii) For the domestic corporation, the designation and number
4 of outstanding shares of each class and series, specifying the
5 classes and series entitled to vote, each class and series entitled
6 to vote as a class, and, if the number of shares is subject to
7 change before the effective date of the conversion, the manner in
8 which the change may occur.

9 (iii) The terms and conditions of the proposed conversion,
10 including the manner and basis of converting the shares into
11 ownership interests or obligations of the surviving business
12 organization, into cash, into other consideration that may include
13 ownership interests or obligations of an entity that is not a party
14 to the conversion, or into a combination of cash and other
15 consideration.

16 (iv) The terms and conditions of the organizational documents
17 that are to govern the surviving business organization.

18 (v) Any other provisions with respect to the proposed
19 conversion that the board considers necessary or desirable.

20 (c) If the board adopts the plan of conversion under
21 subdivision (b), the plan of conversion is submitted for approval
22 in the same manner required for a merger under section 703a(2),
23 including the procedures pertaining to ~~dissenters'~~ **dissenters'**
24 rights if any shareholder has the right to dissent under section
25 762.

26 (d) If the domestic corporation has not commenced business,
27 has not issued any shares, and has not elected a board,
28 subdivisions (b) and (c) do not apply and the incorporators may
29 approve of the conversion of the corporation into a business

1 organization by unanimous consent. To effect the conversion, the
2 majority of the incorporators must execute and file a certificate
3 of conversion under subdivision (e).

4 (e) After the plan of conversion is approved under
5 subdivisions (b) and (c) or the conversion is approved under
6 subdivision (d), the domestic corporation files any formation
7 documents required to be filed under the laws governing the
8 internal affairs of the surviving business organization, in the
9 manner prescribed by those laws, and files a certificate of
10 conversion with the administrator. The certificate of conversion
11 ~~shall~~**must** include all of the following:

12 (i) Unless subdivision (d) applies, all of the information
13 described in subdivision (b) (i) and (ii) and the manner and basis of
14 converting the shares of the domestic corporation contained in the
15 plan of conversion.

16 (ii) Unless subdivision (d) applies, a statement that the board
17 has adopted the plan of conversion by the board under subdivision
18 (c), or if subdivision (d) applies to the conversion, a statement
19 that the domestic corporation has not commenced business, has not
20 issued any shares, and has not elected a board and that the plan of
21 conversion was approved by the unanimous consent of the
22 incorporators.

23 (iii) A statement that the surviving business organization will
24 furnish a copy of the plan of conversion, on request and without
25 cost, to any shareholder of the domestic corporation.

26 (iv) If approval of the shareholders of the domestic
27 corporation was required, a statement that the plan was approved by
28 the shareholders under subdivision (c).

29 (v) A statement specifying each assumed name of the domestic

1 corporation to be used by the surviving business organization and
2 authorized under section 217(5).

3 (2) Section 131 applies in determining when a certificate of
4 conversion under this section becomes effective.

5 (3) When a conversion under this section takes effect, all of
6 the following apply:

7 (a) The domestic corporation converts into the surviving
8 business organization, and the articles of incorporation of the
9 domestic corporation are canceled. Except as otherwise provided in
10 this section, the surviving business organization is organized
11 under and subject to the organizational laws of the jurisdiction of
12 the surviving business organization as stated in the certificate of
13 conversion.

14 (b) The surviving business organization has all of the
15 liabilities of the domestic corporation. The conversion of the
16 domestic corporation into a business organization under this
17 section ~~shall~~**is** not ~~be~~ considered to affect any obligations or
18 liabilities of the domestic corporation incurred before the
19 conversion or the personal liability of any person incurred before
20 the conversion, and the conversion ~~shall~~**is** not ~~be~~ considered to
21 affect the choice of law applicable to the domestic corporation
22 with respect to matters arising before the conversion.

23 (c) The title to all real estate and other property and rights
24 owned by the domestic corporation remain vested in the surviving
25 business organization without reversion or impairment. The rights,
26 privileges, powers, and interests in property of the domestic
27 corporation, as well as the debts, liabilities, and duties of the
28 domestic corporation, ~~shall~~**are** not ~~be~~ considered, as a consequence
29 of the conversion, to have been transferred to the surviving

1 business organization to which the domestic corporation has
2 converted for any purpose of the laws of this state.

3 (d) The surviving business organization may use the name and
4 the assumed names of the domestic corporation if the filings
5 required under section 217(5) or any other applicable statute are
6 made and the laws regarding use and form of names are followed.

7 (e) A proceeding pending against the domestic corporation may
8 be continued as if the conversion had not occurred, or the
9 surviving business organization may be substituted in the
10 proceeding for the domestic corporation.

11 (f) The surviving business organization is considered to be
12 the same entity that existed before the conversion and is
13 considered to be organized on the date that the domestic
14 corporation was originally incorporated.

15 (g) The shares of the domestic corporation that were to be
16 converted into ownership interests or obligations of the surviving
17 business organization or into cash or other property are converted.

18 (h) Unless otherwise provided in a plan of conversion adopted
19 in accordance with this section, the domestic corporation is not
20 required to wind up its affairs or pay its liabilities and
21 distribute its assets on account of the conversion, and the
22 conversion does not constitute a dissolution of the domestic
23 corporation.

24 (4) If the surviving business organization of a conversion
25 under this section is a foreign business organization, it is
26 subject to the laws of this state pertaining to the transaction of
27 business in this state if it transacts business in this state. The
28 surviving business organization is liable, and is subject to
29 service of process in a proceeding in this state, for the

1 enforcement of an obligation of the domestic corporation, and in a
2 proceeding for the enforcement of a right of a dissenting
3 shareholder of the domestic corporation against the surviving
4 business organization.

5 (5) As used in this section and section 746, "business
6 organization" and "entity" mean those terms as defined in section
7 736(1).

8 Sec. 746. (1) A business organization may convert into a
9 domestic corporation, **except a benefit corporation**, if all of the
10 following requirements are satisfied:

11 (a) The conversion is permitted by the law that governs the
12 internal affairs of the business organization and the business
13 organization complies with that law in converting.

14 (b) If a plan of conversion is adopted by the business
15 organization, the plan of conversion is submitted for approval in
16 the manner required by the law governing the internal affairs of
17 that business organization.

18 (c) After the conversion is approved in accordance with the
19 law that governs the internal affairs of the business organization,
20 the business organization files a certificate of conversion with
21 the administrator. The certificate of conversion ~~shall~~**must** include
22 all of the following:

23 (i) The name of the business organization, the type of business
24 organization that is converting, identification of the statute that
25 governs the internal affairs of the business organization, the name
26 of the surviving domestic corporation into which the business
27 organization is converting, the street address of the surviving
28 domestic corporation, and the principal place of business of the
29 surviving domestic corporation.

1 (ii) A statement that the business organization has, in
2 connection with the conversion, complied with the law that governs
3 the internal affairs of the business organization.

4 (iii) A statement specifying each assumed name of the business
5 organization to be used by the surviving domestic corporation and
6 authorized under section 217(6).

7 (iv) Articles of incorporation for the surviving domestic
8 corporation that meet all of the requirements of this act
9 applicable to articles of incorporation.

10 (2) Section 131 applies in determining when a certificate of
11 conversion under this section becomes effective.

12 (3) When a conversion under this section takes effect, all of
13 the following apply:

14 (a) The business organization converts into the surviving
15 domestic corporation. Except as otherwise provided in this section,
16 the surviving domestic corporation is organized under and subject
17 to this act.

18 (b) The surviving domestic corporation has all of the
19 liabilities of the business organization. The conversion of the
20 business organization into a domestic corporation under this
21 section ~~shall~~**is** not ~~be~~ considered to affect any obligations or
22 liabilities of the business organization incurred before the
23 conversion or the personal liability of any person incurred before
24 the conversion, and the conversion ~~shall~~**is** not ~~be~~ considered to
25 affect the choice of law applicable to the business organization
26 with respect to matters arising before the conversion.

27 (c) The title to all real estate and other property and rights
28 owned by the business organization remain vested in the surviving
29 domestic corporation without reversion or impairment. The rights,

1 privileges, powers, and interests in property of the business
2 organization, as well as the debts, liabilities, and duties of the
3 business organization, ~~shall~~**are** not ~~be~~ considered, as a
4 consequence of the conversion, to have been transferred to the
5 surviving domestic corporation to which the business organization
6 has converted for any purpose of the laws of this state.

7 (d) The surviving domestic corporation may use the name and
8 the assumed names of the business organization if the filings
9 required under section 217(6) or any other applicable statute are
10 made and the laws regarding use and form of names are followed.

11 (e) A proceeding pending against the business organization may
12 be continued as if the conversion had not occurred, or the
13 surviving domestic corporation may be substituted in the proceeding
14 for the business organization.

15 (f) The surviving domestic corporation is considered to be the
16 same entity that existed before the conversion and is considered to
17 be organized on the date that the business organization was
18 originally organized.

19 (g) The ownership interests of the business organization that
20 were to be converted into shares or obligations of the surviving
21 domestic corporation or into cash or other property are converted.

22 (h) Unless otherwise provided under the law that governs the
23 internal affairs of the business organization, the business
24 organization is not required to wind up its affairs or pay its
25 liabilities and distribute its assets on account of the conversion,
26 and the conversion does not constitute a dissolution of the
27 business organization.

28 Sec. 762. (1) A shareholder is entitled to dissent from, and
29 obtain payment of the fair value of ~~his, her, or its~~ **the**

1 **shareholder's** shares in the event of, any of the following
2 corporate actions:

3 (a) Consummation of a plan of merger to which the corporation
4 is a party if any of the following are met:

5 (i) Shareholder approval is required for the merger under
6 section 703a or 736(5) or the articles of incorporation and the
7 shareholder is entitled to vote on the merger.

8 (ii) Shareholder approval would be required if section 703a(3)
9 did not apply and the shareholder is a shareholder on the date of
10 the offer under section 703a(3).

11 (iii) The corporation is a subsidiary that is merged with its
12 parent under section 711.

13 (b) Consummation of a plan of share exchange to which the
14 corporation is a party as the corporation whose shares will be
15 acquired, if either of the following are met:

16 (i) The shareholder is entitled to vote on the plan.

17 (ii) The shareholder would be entitled to vote on the plan if
18 section 703a(3) did not apply and the shareholder is a shareholder
19 on the date of the offer under section 703a(3).

20 (c) Consummation of a sale or exchange of all, or
21 substantially all, of the property of the corporation other than in
22 the usual and regular course of business, if the shareholder is
23 entitled to vote on the sale or exchange, including a sale in
24 dissolution, but not including a sale ~~pursuant to~~ **in accordance**
25 **with a** court order.

26 (d) Consummation of a plan of conversion to which the
27 corporation is a party as the corporation that is being converted,
28 if the shareholder is entitled to vote on the plan. However, any
29 rights provided under this section are not available if that

1 corporation is converted into a foreign corporation and the
2 shareholder receives shares that have terms as favorable to the
3 shareholder in all material respects, and represent at least the
4 same percentage interest of the total voting rights of the
5 outstanding shares of the corporation, as the shares held by the
6 shareholder before the conversion.

7 (e) An amendment of the articles of incorporation that creates
8 a right to dissent under section 621.

9 (f) A transaction that creates a right to dissent under
10 section 754.

11 **(g) An amendment to the articles of incorporation of a benefit**
12 **corporation giving rise to a right to dissent under section 953.**

13 **(h) Consummation of a plan of merger or share exchange giving**
14 **rise to a right to dissent under section 955.**

15 (i) ~~(g)~~ Any corporate action taken pursuant to ~~in accordance~~
16 **with** a shareholder vote to the extent **that** the articles of
17 incorporation, bylaws, or a resolution of the board provides that
18 voting or nonvoting shareholders are entitled to dissent and obtain
19 payment for their shares.

20 (2) Unless otherwise provided in the articles of
21 incorporation, bylaws, or a resolution of the board, a shareholder
22 may not dissent from any of the following:

23 (a) Any corporate action set forth in subsection (1)(a) to (f)
24 as to shares that are listed on a national securities exchange on
25 the record date fixed to vote on the corporate action or on the
26 date the resolution of the parent corporation's board is adopted in
27 the case of a merger under section 711 that does not require a
28 shareholder vote under section 713. ~~For purposes of~~ **As used in** this
29 subdivision, "national securities exchange" includes the NASDAQ

1 Global Select Market and the NASDAQ Global Market, but does not
2 include the NASDAQ Capital Market, formerly known as the NASDAQ
3 SmallCap Market.

4 (b) A transaction described in subsection (1)(a) in which
5 shareholders receive cash, shares that satisfy the requirements of
6 subdivision (a) on the effective date of the merger, or any
7 combination of cash and those shares.

8 (c) A transaction described in subsection (1)(b) in which
9 shareholders receive cash, shares that satisfy the requirements of
10 subdivision (a) on the effective date of the share exchange, or any
11 combination of cash and those shares.

12 (d) A transaction described in subsection (1)(c) that is
13 conducted ~~pursuant to~~ **in accordance with** a plan of dissolution that
14 provides for distribution of substantially all of the corporation's
15 net assets to shareholders in accordance with their respective
16 interests within 1 year after the date of closing of the
17 transaction, if the transaction is for cash, shares that satisfy
18 the requirements of subdivision (a) on the date of closing, or any
19 combination of cash and those shares.

20 (e) A transaction described in subsection (1)(d) in which
21 shareholders receive cash, shares that satisfy the requirements of
22 subdivision (a) on the effective date of the conversion, or any
23 combination of cash and those shares.

24 (3) A shareholder that is entitled to dissent and obtain
25 payment for shares under subsection (1)(a) to (f) may not challenge
26 the corporate action that creates that entitlement unless the
27 action is unlawful or fraudulent with respect to the shareholder or
28 the corporation.

29 (4) A shareholder that exercises a right to dissent and ~~seek~~

1 **seeks** payment for shares under subsection ~~(1)(g)~~ **(1)(i)** may not
2 challenge the corporate action that creates that entitlement unless
3 the action is unlawful or fraudulent with respect to the
4 shareholder or the corporation.

5 **CHAPTER 9A**

6 **BENEFIT CORPORATIONS**

7 **Sec. 951. (1) As used in this chapter:**

8 (a) "Benefit enforcement proceeding" means a claim asserted or
9 action brought directly by a benefit corporation, or derivatively
10 on behalf of a benefit corporation, against a director or officer
11 for either of the following:

12 (i) A failure to pursue the general public benefit purpose of
13 the benefit corporation or any specific public benefit purpose set
14 forth in the articles of incorporation of the benefit corporation.

15 (ii) A violation of a duty or standard of conduct under this
16 chapter.

17 (b) "General public benefit" means a material positive impact
18 on society and the environment, taken as a whole, as measured by a
19 third-party standard, from the business and operations of a benefit
20 corporation.

21 (c) "Minimum status vote" means an authorization or approval
22 of a corporate action by the shareholders of a benefit corporation
23 that meets all of the following:

24 (i) The shareholder approval or vote requirements of this act.

25 (ii) Subject to subparagraph (iii), any shareholder approval or
26 vote requirements included in any provisions of the articles of
27 incorporation.

28 (iii) The shareholders of every class or series are entitled to
29 vote on the corporate action regardless of a limitation stated in

1 the articles of incorporation or bylaws on the voting rights of any
2 class or series.

3 (iv) The corporate action is approved by vote of the
4 shareholders of each class or series entitled to cast at least 2/3
5 of the votes that all shareholders of the class or series are
6 entitled to cast on the action.

7 (d) "Specific public benefit" includes, but is not limited to,
8 any of the following:

9 (i) Providing low-income or underserved individuals or
10 communities with beneficial products or services.

11 (ii) Promoting economic opportunity for individuals or
12 communities beyond the creation of jobs in the normal course of
13 business.

14 (iii) Preserving the environment.

15 (iv) Improving human health.

16 (v) Promoting the arts, sciences, or advancement of knowledge.

17 (vi) Increasing the flow of capital to entities that have a
18 public benefit purpose.

19 (vii) Conferring any other particular benefit on society or the
20 environment.

21 (e) "Subsidiary" means an entity in which a person owns
22 beneficially or of record 50% or more of the outstanding equity
23 interests. For purposes of determining a person's ownership
24 percentage under this subdivision, any outstanding rights to
25 acquire equity interests in an entity are considered outstanding
26 equity interests in that entity.

27 (f) "Third-party standard" means a standard for defining,
28 reporting, and assessing overall corporate social and environmental
29 performance that is all of the following:

1 (i) Comprehensive, in that it assesses the effect of the
2 business and its operations on the interests listed in section
3 957(1) (a) (ii) to (v) .

4 (ii) Developed by an organization that is independent of the
5 benefit corporation and satisfies the following requirements:

6 (A) Not more than 1/3 of the members of the governing body of
7 the organization are representatives of either of the following:

8 (I) An association of businesses operating in a specific
9 industry if the performance of the member businesses is measured by
10 the standard.

11 (II) Businesses whose performance is measured by the standard.

12 (B) The organization is not materially financed by an
13 association or business described in sub-subparagraph (A) .

14 (iii) Credible, because the standard is developed by a person
15 that meets both of the following:

16 (A) The person has access to necessary expertise to assess
17 overall corporate social and environmental performance.

18 (B) The person uses a balanced multistakeholder approach that
19 includes a public comment period of at least 30 days to develop the
20 standard.

21 (iv) Transparent, because all of the following are publicly
22 available:

23 (A) The criteria considered in the standard when measuring the
24 overall social and environmental performance of a business, and the
25 relative weightings of those criteria.

26 (B) The following information about the development and
27 revision of the standard:

28 (I) The identity of the directors, officers, any material
29 owners, and the governing body of the organization that developed

1 and controls revisions to the standard.

2 (II) The process by which revisions to the standard and
3 changes to the membership of the governing body are made.

4 (III) An accounting of the sources of financial support for
5 the organization, with sufficient detail to disclose any
6 relationships that could reasonably be considered to present a
7 potential conflict of interest.

8 (2) This chapter does not apply to any corporation that is not
9 a benefit corporation or to a corporation that terminates its
10 status as a benefit corporation under section 953(4).

11 (3) If there is a conflict between a specific provision of
12 this chapter and a general provision of this act, the provision of
13 this chapter applies with respect to a benefit corporation.

14 Sec. 953. (1) A domestic corporation that meets either of the
15 following is a benefit corporation and subject to this chapter:

16 (a) The corporation is formed under this act.

17 (b) The articles of incorporation of the corporation state
18 that it is a benefit corporation. However, an amendment to the
19 articles of incorporation to include the statement described in
20 this subdivision is not effective unless it is adopted by a minimum
21 status vote. A shareholder that does not vote for or consent in
22 writing to the amendment may dissent under section 762 and receive
23 payment for the shares under section 762.

24 (2) In addition to the purposes described in section 202(b),
25 the purposes of a benefit corporation may also include 1 or more
26 specific public benefits identified in the articles of
27 incorporation, but the identification of a specific public benefit
28 under this subsection does not limit the obligation of a benefit
29 corporation to create general public benefit.

1 (3) An amendment to the articles of incorporation of a benefit
2 corporation to change the purposes of the corporation by adding,
3 amending, or deleting 1 or more specific public benefits is not
4 effective unless it is adopted by a minimum status vote. A
5 shareholder that does not vote for or consent in writing to the
6 amendment may dissent under section 762 and receive payment for the
7 shares under section 762.

8 (4) A benefit corporation may terminate its status as a
9 benefit corporation by amending its articles of incorporation to
10 remove the provisions described in this section. However, each of
11 the following applies to an amendment to the articles of
12 incorporation described in this subsection:

13 (a) The amendment is not effective unless it is adopted by a
14 minimum status vote.

15 (b) A shareholder that does not vote for or consent in writing
16 to the amendment may dissent under section 762 and receive payment
17 for the shares under section 762.

18 Sec. 955. (1) In addition to the requirements of chapter 7, if
19 a domestic corporation that is not a benefit corporation is a
20 constituent corporation in a merger or an exchanging corporation in
21 a share exchange, and the surviving or acquiring corporation will
22 be a benefit corporation under the plan of merger or share
23 exchange, the plan must be approved by a minimum status vote of
24 that constituent or exchanging corporation.

25 (2) In addition to the requirements of chapter 7, a plan of
26 merger or share exchange that would have the effect of terminating
27 the status of a domestic corporation as a benefit corporation must
28 be approved by a minimum status vote of that corporation.

29 (3) A shareholder of a corporation that is not a benefit

1 corporation may dissent under section 762 and receive payment for
2 the shares under section 762 if the shareholder did not vote for or
3 consent in writing to a plan of merger or share exchange under
4 subsection (1) and the shareholder held the shares immediately
5 before the effective time of the merger or share exchange.

6 Sec. 957. (1) All of the following apply to the board,
7 committees of the board, and individual directors of a benefit
8 corporation, and to any officer of a benefit corporation who has
9 discretion to act with respect to any matter if it reasonably
10 appears to the officer that the matter may have a material effect
11 on the creation of general public benefit or a specific public
12 benefit by the benefit corporation, in discharging the duties of
13 their respective positions and in considering the best interests of
14 the benefit corporation:

15 (a) They shall consider the effects of any action on all of
16 the following:

17 (i) The shareholders of the benefit corporation.

18 (ii) The employees and workforce of the benefit corporation and
19 its subsidiaries and suppliers.

20 (iii) The interests of customers as beneficiaries of the general
21 public benefit and any specific public benefit included in the
22 purpose of the benefit corporation.

23 (iv) Community and societal considerations, including those of
24 each community where offices or facilities of the benefit
25 corporation and its subsidiaries and suppliers are located.

26 (v) The local and global environment.

27 (vi) The short-term and long-term interests of the benefit
28 corporation, including benefits that may accrue to the benefit
29 corporation from its long-term plans and the possibility that these

1 interests and the general public benefit and any specific public
2 benefit included in the purpose of the benefit corporation may be
3 best served by the continued independence of the benefit
4 corporation.

5 (vii) The ability of the benefit corporation to accomplish
6 general public benefit and any specific public benefit included in
7 the purposes of the benefit corporation.

8 (b) In evaluating a person's proposed acquisition of control
9 of the benefit corporation, they may consider, in addition to the
10 effects of the proposed acquisition on the persons, interests, or
11 factors described in subdivision (a) (i) to (vii), the resources,
12 intent, and conduct of the person seeking to acquire control of the
13 benefit corporation.

14 (c) They may consider any other pertinent factors or the
15 interests of any other group that they consider appropriate.

16 (d) They are not required to give priority to the interests of
17 a particular person or group described in subdivision (a), (b), or
18 (c) over the interests of any other person or group unless the
19 benefit corporation has stated its intention in its articles of
20 incorporation to give priority to interests related to a specific
21 public benefit purpose identified in its articles of incorporation.

22 (2) The consideration of interests and factors by a director
23 or officer of a benefit corporation under subsection (1) in the
24 discharge of the director's or officer's duties does not constitute
25 a violation of section 541a.

26 (3) A director or officer who makes a business judgment in
27 good faith fulfills the director's or officer's duties under this
28 section if the director or officer meets all of the following:

29 (a) Is not interested in the subject of the business judgment.

1 (b) Is informed with respect to the subject of the business
2 judgment to the extent the director or officer reasonably believes
3 to be appropriate under the circumstances.

4 (c) Rationally believes that the business judgment is in the
5 best interests of the benefit corporation.

6 (4) A director of a benefit corporation is not liable for
7 monetary damages to the corporation, the shareholders, or any
8 person that claims to be a beneficiary of a general or specific
9 public benefit for a failure to fulfill a duty arising under this
10 chapter or solely because the director performed duties in
11 compliance with this section.

12 (5) A director or officer of a benefit corporation does not
13 have a duty to a person that is a beneficiary of the general or any
14 specific public benefit purposes of the benefit corporation arising
15 from the status of the person as a beneficiary.

16 (6) Any corporate action taken by a benefit corporation to
17 advance general public benefit or any specific public benefit
18 included in the purpose of the corporation under section 953(2) is
19 presumed to be in the best interests of the benefit corporation.

20 Sec. 959. (1) The duties of any directors and officers of a
21 benefit corporation arising under this chapter, or the general
22 public benefit purpose or any specific public benefit purpose of a
23 benefit corporation organized under this chapter, may be enforced
24 only in a benefit enforcement proceeding under this section. A
25 person shall not bring an action or assert a claim against a
26 benefit corporation or its directors or officers with respect to
27 the duties under this chapter of any directors or officers of the
28 benefit corporation or the general public benefit purpose or any
29 specific public benefit purpose of the benefit corporation

1 organized under this chapter, except in a benefit enforcement
2 proceeding under this section.

3 (2) A benefit enforcement proceeding against a benefit
4 corporation may be commenced or maintained only by 1 of the
5 following:

6 (a) Directly, by the benefit corporation.

7 (b) Derivatively, by any of the following:

8 (i) A shareholder of the benefit corporation that owns
9 beneficially or of record, individually or collectively, as of the
10 date the benefit enforcement proceeding is instituted, either of
11 the following:

12 (A) At least 2% of the corporation's outstanding shares.

13 (B) If the shares of the benefit corporation are listed on a
14 national securities exchange, 2% of the corporation's outstanding
15 shares, or shares that have a market value of \$2,000,000.00,
16 whichever is less.

17 (ii) A director of the benefit corporation.

18 (iii) A person or group of persons that owns beneficially or of
19 record 5% or more of the outstanding voting power in the election
20 of directors of an entity of which the benefit corporation is a
21 subsidiary or the right to receive 5% or more of the distributions
22 to shareholders made by an entity of which the benefit corporation
23 is a subsidiary.

24 (iv) Any other person specified in the articles of
25 incorporation or bylaws of the benefit corporation.

26 (3) A benefit corporation is not liable for monetary damages
27 under this chapter for any failure of the benefit corporation to
28 pursue or create general public benefit or a specific public
29 benefit.

1 (4) An action against a director or officer for failure to
2 perform any of the duties imposed under this section must be
3 commenced within 3 years after the cause of action has accrued, or
4 within 2 years after the time when the cause of action is
5 discovered or should reasonably have been discovered by the
6 complainant, whichever occurs first.

7 Enacting section 1. This amendatory act takes effect 90 days
8 after the date it is enacted into law.

9 Enacting section 2. This amendatory act does not take effect
10 unless Senate Bill No. 666 of the 102nd Legislature is enacted into
11 law.