

AN ACT concerning business.

**Be it enacted by the People of the State of Illinois,
represented in the General Assembly:**

Article 1. General Provisions

Section 1. Short title. This Act may be cited as the Benefit Corporation Act.

Section 1.05. Application and effect of the Act.

(a) This Act shall be applicable to all benefit corporations.

(b) The existence of a provision of this Act shall not of itself create an implication that a contrary or different rule of law is applicable to a corporation which is not a benefit corporation. This Act shall not affect a statute or rule of law that is applicable to a business corporation that is not a benefit corporation.

(c) The Business Corporation Act of 1983, as heretofore or hereafter amended, shall be applicable to such benefit corporations, including their organization, and they shall enjoy the powers and privileges and be subject to the duties, restrictions, and liabilities of other corporations, except so far as the same may be limited or enlarged by this Act. If any provision of this Act conflicts with the Business Corporation

Act of 1983, this Act shall take precedence.

(d) A provision of the articles of incorporation or bylaws of a benefit corporation may not relax, be inconsistent with, or supersede a provision of this Act.

Section 1.10. Definitions. As used in this Act, unless the context otherwise requires, the words and phrases defined in this Section shall have the meanings set forth herein.

"Benefit corporation" means a corporation organized under the Business Corporation Act of 1983:

(1) which has elected to become subject to this Act;
and

(2) whose status as a benefit corporation has not been terminated under Section 2.10.

"Benefit director" means either:

(1) the director designated as the benefit director of a benefit corporation under Section 4.05; 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 pursuant to Section 4.05.

"Benefit enforcement proceeding" means a claim or action for:

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

(2) a violation of an obligation, duty, or standard of

conduct under this Act.

"Benefit officer" means the individual designated as the benefit officer of a benefit corporation under Section 4.15.

"General public benefit" means 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" means having no material relationship with a benefit corporation or a subsidiary of the benefit corporation. A person serving as benefit director or benefit officer may be considered independent. For the purposes of this definition, a percentage of ownership in an entity shall be calculated as if all outstanding rights to acquire equity interests in the entity have been exercised. A material relationship between a person and a benefit corporation or any of its subsidiaries will be conclusively presumed to exist if:

(1) the person is, or has been within the last 3 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 3 years, an executive officer other than a benefit officer of the benefit corporation or its subsidiaries; or

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

(A) the person; or

(B) an entity:

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

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

"Minimum status vote" means that:

(1) in the case of a corporation, in addition to any other approval or vote required by the Business Corporation Act of 1983, the bylaws, or the articles of incorporation:

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

(B) the corporate action shall be approved by vote of the outstanding shares of each class or series entitled to vote by at least two-thirds of the votes that all shareholders of the class or series are entitled to cast on the action; and

(2) in the case of an entity organized under the laws of this State that is not a corporation, in addition to any other approval, vote, or consent required by the statutory law, if any, that principally governs the internal affairs of the entity or any provision of the publicly filed record

or document required to form the entity, if any, or of any agreement binding on some or all of the holders of equity interests in the entity:

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

(B) the action must be approved by a vote or consent of at least two-thirds of such holders.

"Specific public benefit" means:

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

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

(3) preserving the environment;

(4) improving human health;

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

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

(7) the accomplishment of any other particular benefit for society or the environment.

"Subsidiary" of a person means an entity in which the

person owns beneficially or of record 50% or more of the outstanding equity interests. For the purposes of this subsection, a percentage of ownership in an entity shall be calculated as if all outstanding rights to acquire equity interests in the entity have been exercised.

"Third-party standard" means a standard for defining, reporting, and assessing overall corporate, social, and environmental performance that:

(1) is a comprehensive assessment of the impact of the business and the business' operations upon the considerations listed in subdivisions (a)(1)(B) through (a)(1)(E) of Section 4.01;

(2) is developed by an entity that has no material financial relationship with the benefit corporation or any of its subsidiaries;

(3) is developed by an entity that is not materially financed by any of the following organizations and not more than one-third of the members of the governing body of the entity are representatives of:

(A) associations 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; or

(C) businesses whose performance is assessed against the standard; and

(4) is developed by an entity that:

(A) accesses necessary and appropriate expertise to assess overall corporate social and environmental performance; and

(B) uses a balanced multi-stakeholder approach, including a public comment period of at least 30 days to develop the standard; and

(5) makes the following information regarding the standard publicly available:

(A) the factors considered when measuring the overall social and environmental performance of a business and the relative weight, if any, given to each of those factors;

(B) the identity of the directors, officers, any material owners, and the governing body of the entity that developed, and controls revisions to, the standard, and the process by which revisions to the standard and changes to the membership of the governing body are made; and

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

Article 2. Formation of Benefit Corporations

Section 2.01. Formation of benefit corporations. A benefit corporation must be formed in accordance with Article 2 of the Business Corporation Act of 1983. In addition to the formation requirements of that Act, the articles of incorporation of a benefit corporation must state that it is a benefit corporation in accordance with the provisions of this Article.

Section 2.05. Election of status.

(a) A corporation may become a benefit corporation under this Act by amending its articles of incorporation so that they contain a statement that the corporation is a benefit corporation. In order to be effective, the amendment must be adopted by at least the minimum status vote.

(b) For any entity that is a party to a merger or consolidation or is the exchanging entity in a share exchange, where the surviving, new, or resulting entity in the merger, consolidation, or share exchange is intended to be a benefit corporation, such plan of merger, consolidation, or share exchange must be adopted by at least the minimum status vote in order to be effective.

Section 2.10. Termination of status.

(a) A benefit corporation may terminate its status as such and cease to be subject to this Act by amending its articles of incorporation to remove the statement that the corporation is a

benefit corporation. In order to be effective, the amendment must be adopted by at least the minimum status vote.

(b) If a plan of merger, conversion, or share exchange would have the effect of terminating the status of a corporation as a benefit corporation, in order to be effective, the plan must be adopted by at least the minimum status vote.

(c) A sale, lease, exchange or other disposition of all or substantially all of the assets of a benefit corporation, unless the transaction is in the usual and ordinary course of business, shall not be effective unless the transaction is adopted by at least the minimum status vote.

Article 3. Corporate Purposes

Section 3.01. Corporate purposes.

(a) A benefit corporation shall have a purpose of creating general public benefit. This purpose is in addition to its purposes under Section 3.05 of the Business Corporation Act of 1983 and any specific purpose set forth in its articles of incorporation in accordance with subsection (b).

(b) The articles of incorporation of a benefit corporation may identify one or more specific public benefits the creation of which is a purpose of the benefit corporation in addition to its purposes under Section 3.05 of the Business Corporation Act of 1983 and subsection (a). The identification of a specific public benefit under this subsection does not limit the

obligation of a benefit corporation under subsection (a).

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

(d) A benefit corporation may amend its articles of incorporation to add, change, or remove a specific public benefit. In order to be effective, the amendment must be adopted by at least the minimum status vote.

(e) A professional corporation that is a benefit corporation does not violate Sections 3.4 or 6 of the Professional Service Corporation Act by having the purpose to create general public benefit or a specific public benefit.

Article 4. Accountability

Section 4.01. Standard of Conduct for Directors.

(a) Without regard to whether the benefit corporation is subject to Section 8.85 of the Business Corporation Act of 1983, in discharging the duties of their respective positions, the board of directors, committees of the board, and individual directors of a benefit corporation in considering the best interests of the benefit corporation:

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

(A) the shareholders of the benefit corporation;

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

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

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

(E) the local and global environment;

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

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

(2) may consider:

(A) considerations listed in Section 8.85 of the Business Corporation Act of 1983; and

(B) any other pertinent factors or the interests of any other group that they deem appropriate; but

(3) need not give priority to the interests of a particular person or group referred to in paragraphs (1) or (2) over the interests of another person or group unless the benefit corporation has stated in its articles of

incorporation its intention to give priority to certain interests related to its accomplishment of its general public benefit purpose or a specific public benefit purpose identified in its articles of incorporation.

(b) The consideration of interests and factors in the manner required by subsection (a) is in addition to the ability of directors to consider interests and factors as provided in Section 8.85 of the Business Corporation Act of 1983.

(c) A director is not personally liable for monetary damages for:

(1) any action taken as a director if the director performed the duties of office in compliance with Article 8 of the Business Corporation Act of 1983 and this Section; or

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

(d) A director 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.

Section 4.05. Benefit director.

(a) The board of directors of a benefit corporation shall include a director, who:

(1) is designated as the benefit director; and

(2) has, in addition to the powers, duties, rights, and

immunities of the other directors of the benefit corporation, the powers, duties, rights, and immunities provided in this Section.

(b) The benefit director shall be elected, and may be removed, in the manner provided by Article 8 of the Business Corporation Act of 1983 and shall be an individual who is independent, as defined in Section 1.10. The benefit director may serve as the benefit officer at the same time as serving as the benefit director. The articles of incorporation or bylaws of a benefit corporation may prescribe additional qualifications of the benefit director not inconsistent with this Section.

(c) The benefit director shall prepare, and the benefit corporation shall include in the annual benefit report to shareholders required by Section 5.01 of this Act, the opinion of the benefit director on:

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

(2) whether the directors and officers complied with subsection (a) of Section 4.01 and subsection (a) of Section 4.10, respectively, and if, in the opinion of the benefit director, the directors and officers did not so comply, a description of the failure to comply.

(d) The acts of an individual in the capacity of a benefit

director shall constitute, for all purposes, acts of that individual in the capacity of a director of the benefit corporation.

(e) If the bylaws of a benefit corporation provide that the powers and duties conferred or imposed upon the board of directors shall be exercised or performed by a person or persons other than the directors, in contrast to subsection (a) of Section 8.05 of the Business Corporation Act of 1983, or if the bylaws of a close corporation that is a benefit corporation provide that the business and affairs of the corporation shall be managed by or under the director of the shareholders, then the bylaws of the benefit corporation must provide that the person, persons, or shareholders who perform the duties of a board of directors shall include a person with the powers, duties, rights, and immunities of a benefit director.

A person who exercises one or more of the powers, duties, or rights of a benefit director pursuant to this subsection:

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

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

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

(iv) shall not be subject to the procedures for election or removal of directors in Article 8 of the Business Corporation Act of 1983 unless the person is also a director of the benefit corporation or the bylaws make

those procedures applicable.

(f) Regardless of whether the bylaws of a benefit corporation include a provision eliminating or limiting the personal liability of directors authorized by paragraph (3) of subsection (b) of Section 2.10 of the Business Corporation Act of 1983, a benefit director shall not be personally liable for an act or omission in the capacity of a benefit director unless the act or omission constitutes self-dealing, willful misconduct, or a knowing violation of law.

Section 4.10. Standard of conduct for officers.

(a) Each officer of a benefit corporation shall consider the interests and factors described in subsection (a) of Section 4.01 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 incorporation by the benefit corporation.

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

(1) action taken as an officer if the officer performed the duties of the position in compliance with this Section;
or

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

(c) 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.

Section 4.15. Benefit officer.

(a) A benefit corporation may have an officer designated as the benefit officer.

(b) A benefit officer shall have:

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

(A) by the bylaws of the benefit corporation; or

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

(2) the duty to prepare the benefit report required by Section 5.01 of this Act.

Section 4.20. Right of action; benefit enforcement proceeding.

(a) No person may bring an action or assert a claim against a benefit corporation or its directors or officers with respect to failure to pursue or create general public benefit or a

specific public benefit set forth in its articles of incorporation or violation of a duty or standard of conduct under this Act except in a benefit enforcement proceeding.

(b) A benefit enforcement proceeding may be commenced or maintained only:

(1) directly by the benefit corporation; or

(2) derivatively by:

(A) a shareholder;

(B) a director;

(C) a person or group of persons that owns beneficially or of record 5% or more of the equity interests in an entity of which the benefit corporation is a subsidiary; or

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

(c) A benefit corporation shall not be liable for monetary damages under this Act for any failure of the benefit corporation to pursue or create general public benefit or a specific public benefit.

Article 5. Transparency

Section 5.01. Annual benefit report.

(a) A benefit corporation shall prepare an annual benefit report including all of the following:

(1) A narrative description of:

(A) the process and rationale for selecting the third party standard used to prepare the benefit report;

(B) the ways in which the benefit corporation pursued general public benefit during the year and the extent to which general public benefit was created;

(C) the ways in which the benefit corporation pursued a specific public benefit that the articles state it is the purpose of the benefit corporation to create and the extent to which that specific public benefit was created; and

(D) any circumstances that have hindered the pursuit by the benefit corporation of its general public benefit purpose and any specific public benefit purpose or the creation by the benefit corporation of general public benefit and any specific public benefit.

(2) An assessment of the overall social and environmental performance of the benefit corporation against a third-party standard:

(A) applied consistently with any application of that standard in prior benefit reports; or

(B) accompanied by an explanation of the reasons for any inconsistent application.

(3) The name of the benefit director and the benefit officer, if any, and the address to which correspondence to

each of them may be directed.

(4) The compensation paid by the benefit corporation during the year to each director in the capacity of a director.

(5) The name of each person that owns 5% or more of the outstanding shares of the benefit corporation either:

(A) beneficially, to the extent known to the benefit corporation without independent investigation; or

(B) of record.

(6) The statement of the benefit director required by subsection (c) of Section 4.05.

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

(8) If the benefit corporation has dispensed with, or restricted the discretion or powers of, the board of directors, its annual benefit report must describe the persons who exercise the powers, duties, and rights, and have the immunities of the board of directors and the benefit director as required by subsection (e) of Section 4.05.

(b) The benefit corporation shall send a benefit report annually to each shareholder:

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

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

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

(d) If a benefit corporation does not have an Internet website, the benefit corporation shall provide a copy of its most recent benefit report, without charge, to any person that requests a copy.