AN ACT

To enact Chapter 27 of Title 12 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 12:1801 through 1832, relative to benefit corporations; to enact the "Benefit Corporations Law"; to provide for applicability; to provide for definitions; to provide for formation of benefit corporations; to provide for election and termination of benefit corporation status; to provide for corporate purposes; to provide for a standard of conduct for directors and officers; to provide for a benefit director; to provide for a benefit officer; to provide for a right of action; to require an annual benefits report; to provide for stock certificates; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Chapter 27 of Title 12 of the Louisiana Revised Statutes of 1950, comprised of R.S. 12:1801 through 1832, is hereby enacted to read as follows:

CHAPTER 27. BENEFIT CORPORATIONS

PART I. PRELIMINARY PROVISIONS

§1801. Short title

This Chapter shall be known and may be cited as the "Benefit Corporations Law".

§1802. Application and effect of Chapter

A. This Chapter shall apply to all benefit corporations.

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

CODING: Words in struck through type are deletions from existing law; words underscored are additions.
or rule of law that is applicable to a business corporation that is not a benefit corporation.

C. Except as otherwise provided in this Chapter, the Business Corporation Law, R.S. 12:1 et seq., shall be generally applicable to all benefit corporations. The specific provisions of this Chapter shall control over the general provisions of the Business Corporation Law. A benefit corporation may be simultaneously subject to this Chapter and one or more other Chapters within this Title.

D. A provision of the articles or bylaws of a benefit corporation shall not relax, be inconsistent with, or supersede a provision of this Chapter.

§1803. Definitions

A. As used in this Chapter, the following terms and phrases shall have the meaning ascribed to them in this Section, unless the context clearly indicates otherwise:

(1) "Affiliate" means, in relation to a person, a subsidiary of the person or an entity which owns beneficially or of record a majority of the outstanding equity interests of the person.

(2) "Benefit corporation" means a business corporation which has elected to become subject to this Chapter and whose status as a benefit corporation has not been terminated.

(3) "Benefit director" means the director designated as the benefit director of a benefit corporation pursuant to R.S. 12:1822.

(4) "Benefit enforcement proceeding" means any claim or action for one or both of the following:

(a) Failure of a benefit corporation to pursue or create general public benefit or a specific public benefit set forth in its articles.

(b) Violation of any obligation, duty, or standard of conduct pursuant to this Chapter.

(5) "Benefit officer" means the individual designated as the benefit officer of a benefit corporation pursuant to R.S. 12:1824.
(6) "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.

(7) "Independent" means having no material relationship with a benefit corporation or a subsidiary of the benefit corporation.

(8) "Material relationship" means the relationship between a person and a benefit corporation or any of its subsidiaries if any of the following apply:

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

(b) An immediate family member of the person is, or has been within the last three years, an employee, officer, or director of the benefit corporation, or an affiliate of the benefit corporation.

(c) There is beneficial or record ownership of five percent or more of the outstanding shares of the benefit corporation by either the person or an entity of which the person is a director, an officer, or a manager, or in which the person owns beneficially or of record five percent or more of the outstanding equity interests.

(9) "Minimum vote" means:

(a) In the case of a business corporation, the approval by holders of two-thirds of the shares present and voting of each class or series and any other approval or vote required under the Business Corporation Law or the articles.

(b) In the case of a domestic entity other than a business corporation, the approval by holders of two-thirds of each class or series of equity interests entitled to vote on any issue and any other approval or vote required under the law governing the internal affairs of the entity or its constituent documents.

(10) "Specific public benefit" means any of the following:

(a) Serving low-income or underserved individuals or communities.

(b) Promoting economic opportunity for low-income or underserved individuals or communities.
(c) Preserving the environment, promoting positive impacts on the environment, or reducing negative impacts on the environment.

(d) Improving human health.

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

(f) Increasing the flow of capital to entities with a purpose listed in this Paragraph.

(g) Historic preservation.

(h) Urban beautification.

(11) “Subsidiary” means, in relation to a person, an entity in which the person owns beneficially or of record fifty percent or more of the outstanding equity interests.

(12) “Third-party standard” means a recognized standard for defining, reporting, and assessing the performance of corporations in producing general public benefit and specific public benefits which is all of the following:

(a) Comprehensive in that it assesses the effect of the corporation and its operations in producing general public benefit and any specific public benefit specified in the articles.

(b) Transparent because the following information about the standard is publicly available:

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

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

(iii) The identity of the directors, officers, material owners, and the governing body of the organization that developed and controls revisions to the standard.

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

(v) An accounting of the sources of financial support for the organization, with sufficient detail to disclose any relationships that could reasonably be considered to present a potential conflict of interest.
B. Terms not otherwise defined in Subsection A of this Section shall have the meanings given to them in the Business Corporation Law.

C. For purposes of the definitions in this Section, a percentage of ownership in an entity shall be calculated as if all outstanding rights to acquire equity interests in the association have been exercised.

§1804. Election of status; corporate name

A. A business corporation incorporated in accordance with R.S. 12:21 et seq. may elect to be a benefit corporation under this Chapter by stating in its articles that it is a benefit corporation subject to this Chapter.

B. Any amendment to the articles of an existing business corporation to add a statement that it is a benefit corporation subject to this Chapter shall be adopted by at least the minimum vote. The notice of the meeting of shareholders to approve the amendment shall state the specific public benefits, if any, to be included in the purposes of the benefit corporation and shall explain the anticipated impact on shareholders of becoming a benefit corporation.

C. If an entity that is not a benefit corporation is a party to a merger or consolidation, and the surviving or new entity in the merger or consolidation is to be a benefit corporation, then the plan of merger or consolidation shall be adopted by at least the minimum vote.

D. The corporate name of a benefit corporation shall end with the following phrase, which may be in parentheses, "A Benefit Corporation".

§1805. Termination of status

A. A benefit corporation may terminate its status as such and cease to be subject to this Chapter by amending its articles to delete the provision required by R.S. 12:1804 to be stated in the articles of a benefit corporation. In order to be effective, the amendment shall be adopted by at least the minimum vote.

B. If a merger or consolidation of a benefit corporation would have the effect of terminating the status of a business corporation as a benefit corporation, in order to be effective, the plan of merger or consolidation shall be adopted by at least the minimum vote of the benefit corporation. Any sale, lease, exchange, or other

CODING: Words in struck through type are deletions from existing law; words underscored are additions.
disposition of all or substantially all of the assets of a benefit corporation, unless the
transaction is in the usual and regular course of business, shall not be effective unless
the transaction is approved by at least the minimum vote.

§§1806-1810. [Reserved.]

PART II. CORPORATE PURPOSES

§1811. Corporate purposes

A. A benefit corporation shall have a purpose of creating a general public
benefit. This purpose is in addition to its purpose under R.S. 12:21 et seq.

B. The articles of a benefit corporation may identify one or more specific
public benefits that it is the purpose of the benefit corporation to create in addition
to its purposes under R.S. 12:21 et seq. and Subsection A of this Section. The
identification of a specific public benefit under this Subsection shall not limit the
obligation of a benefit corporation under Subsection A of this Section.

C. The creation of a general public benefit and specific public benefit under
Subsections A and B of this Section is in the best interests of the benefit corporation.

D. A benefit corporation may amend its articles to add, amend, or delete the
identification of a specific public benefit that it is the purpose of the benefit
corporation to create. In order to be effective, the amendment shall be adopted by
at least the minimum vote.

E. A professional corporation that is a benefit corporation shall not be
deemed in violation of R.S. 12:804, 904, 984, 1054, 1074, 1089, 1113, 1133, 1154,
1193, or 1403 by having the purpose to create general public benefit or a specific
public benefit.

§§1812-1820. [Reserved.]

PART III. ACCOUNTABILITY

§1821. Standard of conduct for directors

A. In discharging the duties of their respective positions and in considering
the best interests of the benefit corporation, the board of directors, committees of the
board, and individual directors of a benefit corporation:
(1) Shall consider the effects of any action or inaction upon all of the following:

(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 factors, 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.

(g) The ability of the benefit corporation to accomplish its general public benefit purpose and any specific public benefit purpose.

(2) May consider other pertinent factors or the interests of any other group that they deem appropriate.

(3) Shall not be required to give priority to the interests of a particular person or group referred to in Paragraph (1) or (2) of this Subsection over the interests of any other person or group unless the benefit corporation has stated in its articles the intention to give priority to certain interests related to the accomplishment of its general public benefit purpose or of a specific public benefit purpose identified in the articles.

B. The consideration of interests and factors in the manner required by Subsection A of this Section shall not constitute a violation of R.S. 12:91.

C. A director shall not be personally liable for monetary damages for any of the following:
(1) Any act or omission covered by a provision in the articles of incorporation that eliminates or limits the liability of the director as authorized in R.S. 12:24(C)(4).

(2) Any act or omission as a director if the director performed the duties of office pursuant to R.S. 12:91.

(3) Failure of the benefit corporation to pursue or create a general public benefit or specific public benefit.

D. A director shall 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.

§1822. Benefit director

A. The board of directors of a benefit corporation shall include a director who shall be designated the benefit director and who shall have, in addition to the powers, duties, rights, and immunities of the other directors of the benefit corporation, the powers, duties, rights, and immunities provided for in this Part.

B. The benefit director shall be elected, and may be removed, pursuant to R.S. 12:81, and shall be an individual who is independent. The benefit director may serve as the benefit officer at the same time as serving as the benefit director. The articles or bylaws of a benefit corporation may prescribe additional qualifications or duties of the benefit director not inconsistent with this Subsection.

C. The benefit director shall be responsible for the preparation of an annual benefit report submitted to shareholders as required by R.S. 12:1831. The benefit director may retain an independent third party to audit the annual benefit report or conduct any other assessment of the corporation’s pursuit of its general public benefit purpose and any specific public benefit purpose. The annual benefit report shall include a statement of the benefit director, in the opinion of the benefit director, on all of the following:

   (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,
(2) Whether the directors and officers complied with R.S. 12:1821(A) and 1823(A), respectively.

(3) If, in the opinion of the benefit director, the benefit corporation or its directors or officers failed to comply with R.S. 12:1821(A) and 1823(A), a description of the ways in which the benefit corporation or its directors or officers failed to comply.

D. The act or inaction of an individual in the capacity of a benefit director shall constitute for all purposes an act or inaction of that individual in the capacity of a director of the benefit corporation.

E. Regardless of whether the bylaws of a benefit corporation include a provision eliminating or limiting the personal liability of directors authorized by R.S. 12:24(C)(4), 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.

F. The benefit director of a professional corporation shall not be required to be independent.

§1823. Standard of conduct for officers

A. Each officer of a benefit corporation shall consider the interests and factors described in R.S. 12:1821 in the manner provided in that Section if all of the following applies:

(1) The officer has discretion to act with respect to the matter.

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

B. The consideration of interests and factors pursuant to Subsection A of this Section shall not constitute a violation of R.S. 12:91.

C. An officer shall not be personally liable for monetary damages for either of the following:

(1) An action or omission as an officer if the officer performed the duties of the position pursuant to R.S. 12:91.
(2) Failure of the benefit corporation to pursue or create general public
benefit or specific public benefit.

D. An officer shall 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.

§1824. Benefit officer

A. A benefit corporation may have an officer designated as the benefit
officer.

B. A benefit officer shall have all of the following:

(1) The powers and duties relating to the purpose of the corporation to create
a general public benefit or specific public benefit provided by the bylaws or, absent
controlling provisions in the bylaws, by resolutions or orders of the board of
directors.

(2) The duty to prepare the benefit report required by R.S. 12:1831.

C. An officer shall not be personally liable for monetary damages for any of
the following:

(1) Any act or omission covered by a provision in the articles of
incorporation that eliminates or limits the liability of the officer as authorized in R.S.
12:24(C)(4).

(2) Any act or omission as an officer if the officer performed the duties of
office pursuant to R.S. 12:91.

(3) Failure of the benefit corporation to pursue or create general public
benefit or a specific public benefit.

§1825. Right of action

A. The duties of directors and officers under this Chapter and the general
public benefit purpose and any specific public benefit purpose of a benefit
corporation may be enforced only in accordance with this Section in a benefit
enforcement proceeding, and no person shall bring an action or assert a claim against
a benefit corporation.
B. A benefit enforcement proceeding shall be commenced or maintained only directly by the benefit corporation or derivatively by one of the following parties:

(1) A shareholder.

(2) A benefit director.

(3) Other persons as specified in the articles or bylaws of the benefit corporation.

§§1826-1830. [Reserved.]

PART IV. TRANSPARENCY

§1831. Annual benefit report

A. A benefit corporation shall prepare an annual benefit report including all of the following:

(1) A narrative description of all of the following:

(a) The ways in which the benefit corporation pursued a general public benefit during the year and the extent to which the general public benefit was created.

(b) 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.

(c) Any circumstances that have hindered the creation by the benefit corporation of a general public benefit or specific public benefit.

(d) The process and rationale for selecting or changing the third-party standard used to prepare the benefit report.

(2) An assessment of the performance of the benefit corporation in pursuing the creation of general public benefit against a third-party standard which is either applied consistently with any application of that standard in prior benefit reports or accompanied by an explanation of the reasons for any inconsistent application. The assessment shall not be required to be performed, audited, or certified by a third-party standards provider.
(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 five percent or more of the
outstanding shares of the benefit corporation.

(6) The statement of the benefit director pursuant to R.S. 12:1822(C).

(7) A statement of any connection between the organization that established
the third-party standard, or its directors, officers, or any holder of five percent or
more of the governance interests in the organization, and the benefit corporation or
its directors, officers, or any holder of five percent or more of the outstanding shares
of the benefit corporation, including any financial or governance relationship which
might materially affect the credibility of the use of the third-party standard.

B. A benefit corporation shall annually send a benefit report to each
shareholder either:

(1) Within one hundred twenty days following the end of the fiscal year of
the benefit corporation.

(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. 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, but the compensation paid to directors and financial
or proprietary information included in the benefit report may be omitted from the
copy of the benefit report provided.

§1832. Stock certificates
All certificates representing shares in a benefit corporation shall contain, in addition to any other statements required by the Business Corporation Law, the following conspicuous language on the face of the certificate: “This corporation is a benefit corporation subject to the Benefit Corporations Law, R.S. 12:1801 et seq.”

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: ___________________