

Regular Session, 2012

HOUSE BILL NO. 1178

BY REPRESENTATIVES LEGER AND ORTEGO

1 AN ACT

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

10 Be it enacted by the Legislature of Louisiana:

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

13 CHAPTER 27. BENEFIT CORPORATIONS

14 PART I. PRELIMINARY PROVISIONS

15 §1801. Short title

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

18 §1802. Application and effect of Chapter

19 A. This Chapter shall apply to all benefit corporations.

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

1 or rule of law that is applicable to a business corporation that is not a benefit  
2 corporation.

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

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

10 §1803. Definitions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18                  (9) "Minimum vote" means:

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

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

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

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

28                  (b) Promoting economic opportunity for low-income or underserved  
29                  individuals or communities.

1                   (c) Preserving the environment, promoting positive impacts on the  
 2                   environment, or reducing negative impacts on the environment.

3                   (d) Improving human health.

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

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

7                   (g) Historic preservation.

8                   (h) Urban beautification.

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

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

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

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

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

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

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

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

28                  (v) An accounting of the sources of financial support for the organization,  
 29                  with sufficient detail to disclose any relationships that could reasonably be  
 30                  considered to present a potential conflict of interest.

1           B. Terms not otherwise defined in Subsection A of this Section shall have  
2           the meanings given to them in the Business Corporation Law.

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

6           §1804. Election of status; corporate name

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

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

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

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

22          §1805. Termination of status

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

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

1 disposition of all or substantially all of the assets of a benefit corporation, unless the  
2 transaction is in the usual and regular course of business, shall not be effective unless  
3 the transaction is approved by at least the minimum vote.

4 §§1806-1810. [Reserved.]

5 PART II. CORPORATE PURPOSES

6 §1811. Corporate purposes

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

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

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

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

20 E. A professional corporation that is a benefit corporation shall not be  
21 deemed in violation of R.S. 12:804, 904, 984, 1054, 1074, 1089, 1113, 1133, 1154,  
22 1193, or 1403 by having the purpose to create general public benefit or a specific  
23 public benefit.

24 §§1812-1820. [Reserved.]

25 PART III. ACCOUNTABILITY

26 §1821. Standard of conduct for directors

27 A. In discharging the duties of their respective positions and in considering  
28 the best interests of the benefit corporation, the board of directors, committees of the  
29 board, and individual directors of a benefit corporation:

1                   (1) Shall consider the effects of any action or inaction upon all of the  
2                   following:

3                   (a) The shareholders of the benefit corporation.

4                   (b) The employees and work force of the benefit corporation, its subsidiaries,  
5                   and its suppliers.

6                   (c) The interests of customers as beneficiaries of the general public benefit  
7                   or specific public benefit purposes of the benefit corporation.

8                   (d) Community and societal factors, including those of each community in  
9                   which offices or facilities of the benefit corporation, its subsidiaries, or its suppliers  
10                  are located.

11                  (e) The local and global environment.

12                  (f) The short-term and long-term interests of the benefit corporation,  
13                  including benefits that may accrue to the benefit corporation from its long-term plans  
14                  and the possibility that these interests may be best served by the continued  
15                  independence of the benefit corporation.

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

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

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

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

28                  C. A director shall not be personally liable for monetary damages for any of  
29                  the following:

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

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

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

8           D. A director shall not have a duty to a person that is a beneficiary of the  
9           general public benefit purpose or a specific public benefit purpose of a benefit  
10           corporation arising from the status of the person as a beneficiary.

11           §1822. Benefit director

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

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

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

28           (1) Whether the benefit corporation acted in accordance with its general  
29           public benefit purpose and any specific public benefit purpose in all material respects  
30           during the period covered by the report.

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

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

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

10                  E. Regardless of whether the bylaws of a benefit corporation include a  
11                  provision eliminating or limiting the personal liability of directors authorized by R.S.  
12                  12:24(C)(4), a benefit director shall not be personally liable for an act or omission  
13                  in the capacity of a benefit director unless the act or omission constitutes  
14                  self-dealing, willful misconduct, or a knowing violation of law.

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

17                  §1823. Standard of conduct for officers

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

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

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

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

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

29                         (1) An action or omission as an officer if the officer performed the duties of  
30                         the position pursuant to R.S. 12:91.

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

3                   D. An officer shall not have a duty to a person that is a beneficiary of the  
4                   general public benefit purpose or a specific public benefit purpose of a benefit  
5                   corporation arising from the status of the person as a beneficiary.

6                   §1824. Benefit officer

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

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

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

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

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

17                  (1) Any act or omission covered by a provision in the articles of  
18                  incorporation that eliminates or limits the liability of the officer as authorized in R.S.  
19                  12:24(C)(4).

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

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

24                  §1825. Right of action

25                  A. The duties of directors and officers under this Chapter and the general  
26                  public benefit purpose and any specific public benefit purpose of a benefit  
27                  corporation may be enforced only in accordance with this Section in a benefit  
28                  enforcement proceeding, and no person shall bring an action or assert a claim against  
29                  a benefit corporation.

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.



1                   (3) The name of the benefit director and the benefit officer, if any, and the  
2                   address to which correspondence to each of them may be directed.

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

5                   (5) The name of each person that owns five percent or more of the  
6                   outstanding shares of the benefit corporation.

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

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

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

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

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

20                  C. A benefit corporation shall post all of its benefit reports on the public  
21                  portion of its Internet website, if any. The compensation paid to directors and  
22                  financial or proprietary information included in the benefit reports may be omitted  
23                  from the benefit reports as posted.

24                  D. If a benefit corporation does not have an Internet website, the benefit  
25                  corporation shall provide a copy of its most recent benefit report, without charge, to  
26                  any person that requests a copy, but the compensation paid to directors and financial  
27                  or proprietary information included in the benefit report may be omitted from the  
28                  copy of the benefit report provided.

29                  §1832. Stock certificates

1                   All certificates representing shares in a benefit corporation shall contain, in  
 2                   addition to any other statements required by the Business Corporation Law, the  
 3                   following conspicuous language on the face of the certificate: "This corporation is  
 4                   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: \_\_\_\_\_