

New law creates the "Benefit Corporations Law".

New law applies to all benefit corporations.

New law 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. New law shall not affect a statute or rule of law that is applicable to a business corporation that is not a benefit corporation.

New law provides that, except as otherwise provided in new law, the Business Corporation Law shall be generally applicable to all benefit corporations. The specific provisions of new law shall control over the general provisions of the Business Corporation Law. A benefit corporation may be simultaneously subject to the Benefit Corporations Law and other provisions of new law.

New law prohibits a provision of the articles or bylaws of a benefit corporation from relaxing, being inconsistent with, or superseding a provision of new law.

New law defines "affiliate" as, 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.

New law defines "benefit corporation" as a business corporation which has elected to become subject to new law and whose status as a benefit corporation has not been terminated.

New law defines "benefit director" as the director designated as the benefit director of a benefit corporation under new law.

New law defines "benefit enforcement proceeding" as any claim or action for the failure of a benefit corporation to pursue or create general public benefit or a specific public benefit set forth in its articles or the violation of any obligation, duty, or standard of conduct under new law.

New law defines "benefit officer" as the individual designated as the benefit officer of a benefit corporation under new law.

New law defines "general public benefit" as 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.

New law defines "independent" as having no material relationship with a benefit corporation or a subsidiary of the benefit corporation.

New law defines "material relationship" as the relationship between a person and a benefit corporation or any of its subsidiaries if any of the following apply:

- (1) The person is, or has been within the last three years, an employee, other than a benefit officer of the benefit corporation, or an affiliate of the benefit corporation.
- (2) 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 its affiliate.
- (3) There is beneficial or record ownership of 5% 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 5% or more of the outstanding equity interests.

New law defines "minimum vote" as, in the case of a business corporation, the approval by holders of 2/3 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.

New law defines "minimum vote" as, in the case of a domestic entity other than a business corporation, the approval by holders of 2/3 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.

New law defines "specific public benefit" as any of the following: serving low-income or underserved individuals or communities; promoting economic opportunity for low-income or underserved individuals or communities; preserving the environment, promoting positive impacts on the environment, or reducing negative impacts on the environment; improving human health; promoting the arts, sciences, or advancement of knowledge; increasing the flow of capital to entities with a purpose listed in New law; historic preservation; or urban beautification.

New law defines "subsidiary" as, in relation to a person, an entity in which the person owns beneficially or of record 50% or more of the outstanding equity interests.

New law defines "third-party standard" as 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:

- (1) Comprehensive in that it assesses the effect of the corporation operations upon the specific public benefit specified in the articles.
- (2) Transparent because the following information about the standard is publicly available:
  - (a) The criteria considered when measuring the overall social and environmental performance of a business.
  - (b) The relative weightings, if any, of those criteria.
  - (c) The identity of the directors, officers, material owners, and the governing body of the organization that developed and controls revisions to the standard.
  - (d) The process by which revisions to the standard and changes to the membership of the governing body are made.
  - (e) 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.

Terms not otherwise defined in new law shall have the meanings given to them in the Business Corporation Law.

For purposes of the definitions in new law, 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.

New law provides that a business corporation incorporated may elect to be a benefit corporation by stating in its articles that it is a benefit corporation subject to new law.

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

New law provides that 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.

New law requires the corporate name of a benefit corporation to end with the following phrase, which may be in parentheses, "A Benefit Corporation".

New law provides that a benefit corporation may terminate its status as such by amending its articles to delete the provision required by new law 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 status vote.

New law provides that 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 must be adopted by at least the minimum vote. New law further provides that any 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 regular course of business, shall not be effective unless the transaction is approved by at least the minimum vote.

New law requires a benefit corporation to have a purpose of creating general public benefit.

New law provides that 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. The identification of a specific public benefit shall not limit the obligation of a benefit corporation to create a general public benefit.

New law provides that the creation of a general public benefit and specific public benefit is in the best interests of the benefit corporation.

New law authorizes a benefit corporation to 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.

New law provides that a professional corporation that is a benefit corporation shall not be deemed in violation of provisions prohibiting a professional corporation from having a purpose other than to practice the specified profession by having the purpose to create general public benefit or a specific public benefit.

New law provides that, 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 and officers of a benefit corporation shall consider the effects of any action or inaction upon all of the following:

- (1) The shareholders of the benefit corporation.
- (2) The employees and workforce of the benefit corporation, its subsidiaries, and its suppliers.
- (3) The interests of customers as beneficiaries of the general public benefit or specific public benefit purposes of the benefit corporation.
- (4) 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.
- (5) The local and global environment.
- (6) 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.
- (7) The ability of the benefit corporation to accomplish its general public benefit purpose and any specific public benefit purpose.

New law provides that, 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 may consider other pertinent factors or the interests of any other group that they deem appropriate.

New law provides that, 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 are not required to give priority to the interests of a particular person or group over the interests of any other person or group unless the benefit corporation has stated in its articles its intention to give priority to certain interests related to its accomplishment of its general public benefit purpose or of a specific public benefit purpose identified in its articles.

New law provides that the consideration of interests and factors in the manner required by new law shall not constitute a violation of the fiduciary duty of the directors and officers.

New law provides that 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.
- (2) Any act or omission as a director if the director performed the duties of.
- (3) Failure of the benefit corporation to pursue or create general public benefit or specific public benefit.

New law provides that 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.

New law requires the board of directors of a benefit corporation to 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 new law.

New law provides that the benefit director shall be elected, and may be removed, pursuant to the Business Corporations Law and shall be an individual who is independent.

New law authorizes the benefit director to serve as the benefit officer at the same time as serving as the benefit director. New law further authorizes the articles or bylaws of a benefit corporation to prescribe additional qualifications or duties of the benefit director not inconsistent with new law.

New law requires the benefit director to prepare an annual benefit report submitted to shareholders.

New law authorizes the benefit director to 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.

New law requires the annual benefit report to 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 the fiduciary duty contained in new law.
- (3) If, in the opinion of the benefit director, the benefit corporation or its directors or officers failed to comply with their fiduciary duty, a description of the ways in which the benefit corporation or its directors or officers failed to comply.

New law provides that 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.

New law provides that, regardless of whether the bylaws of a benefit corporation include a provision eliminating or limiting the personal liability of directors, 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.

New law provides that the benefit director of a professional corporation shall not be required to be independent.

New law requires each officer of a benefit corporation to consider the interests and factors previously described in new law if the officer has discretion to act with respect to a matter and 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.

New law provides that the consideration of interests and factors in the manner prescribed by new law shall not constitute a violation of the fiduciary duty of the directors and officers.

New law provides that an officer shall not be personally liable for monetary damages for either an action or omission as an officer if the officer performed the duties of the position pursuant to new law or the failure of the benefit corporation to pursue or create general public benefit or specific public benefit.

New law provides that 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.

New law authorizes a benefit corporation to have an officer designated as the benefit officer.

New law requires the benefit officer to 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 new law.

New law provides that 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 director.
- (2) Any act or omission as a director if the director performed the duties of office pursuant to existing law.
- (3) Failure of the benefit corporation to pursue or create general public benefit or specific public benefit.

New law provides that the duties of directors and officers under new law and the general public benefit purpose and any specific public benefit purpose of a benefit corporation may be enforced only in accordance with new law in a benefit enforcement proceeding, and no person shall bring an action or assert a claim against a benefit corporation.

New law requires a benefit enforcement proceeding to be commenced or maintained directly only by the benefit corporation or derivatively by one of the following parties:

- (1) A shareholder.
- (2) A director.

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

New law requires a benefit corporation to 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 5% or more of the outstanding shares of the benefit corporation.
- (6) The statement of the benefit director.
- (7) A statement of any connection between the organization that established the third-party standard, or its directors, officers, or any holder of 5% or more of the governance interests in the organization, and the benefit corporation or its directors, officers, or any holder of 5% 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.

New law requires a benefit corporation to annually send a benefit report to each shareholder either:

- (1) Within 120 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.

New law requires a benefit corporation to 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.

New law provides that, 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.

New law requires all certificates representing shares in a benefit corporation to 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."

Effective August 1, 2012.

(Adds R.S. 12:1801-1832)