

Chapter 98

(House Bill 1009)

AN ACT concerning

Corporations – ~~B (For Benefit)~~ Benefit Corporation

FOR the purpose of authorizing a corporation to elect to be a certain ~~B (for benefit)~~ benefit corporation by amending or including in the charter of the corporation a statement that the corporation is a ~~B~~ benefit corporation; providing for the application of this Act; requiring the election to be approved by the stockholders in a certain manner; authorizing a corporation to terminate status as a ~~B~~ benefit corporation in a certain manner; requiring that clear reference to the fact that a corporation is a ~~B~~ benefit corporation appear prominently in a certain charter document; establishing that every ~~B~~ benefit corporation shall have the purpose of creating a certain general public benefit; authorizing the charter of a benefit corporation to identify as one of the purposes of the benefit corporation the creation of certain specific public benefits; establishing that the creation of a certain public benefit as provided in this Act is in the best interests of the ~~B~~ benefit corporation; requiring a director of a ~~B~~ benefit corporation, in performing the duties of director, in determining what the director reasonably believes to be in the best interests of the ~~B~~ benefit corporation, to consider the effects of any action or decision not to act on certain factors; establishing that a certain director shall not have any duty to a certain person; providing that a certain director shall have a certain immunity from liability under certain circumstances; requiring a ~~B~~ benefit corporation to deliver to each stockholder a certain annual report; requiring a benefit corporation to post a certain report on its website or provide a copy of the report under certain circumstances; defining certain terms; and generally relating to ~~for benefit~~ benefit corporations.

BY adding to

Article – Corporations and Associations

Section 5–6C–01 through 5–6C–08 to be under the new subtitle “Subtitle 6C. ~~B~~ (For Benefit) Benefit Corporations”

Annotated Code of Maryland

(2007 Replacement Volume and 2009 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Corporations and Associations

SUBTITLE 6C. ~~B (FOR BENEFIT)~~ BENEFIT CORPORATIONS.

5-6C-01.

(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(B) ~~“B~~ BENEFIT CORPORATION” MEANS A MARYLAND CORPORATION THAT ELECTS TO BE A ~~FOR-BENEFIT~~ BENEFIT CORPORATION IN ACCORDANCE WITH § 5-6C-03 OF THIS SUBTITLE AND HAS NOT CEASED TO BE A ~~FOR-BENEFIT~~ BENEFIT CORPORATION THROUGH THE OPERATION OF § 5-6C-04 OF THIS SUBTITLE.

(C) “GENERAL PUBLIC BENEFIT” MEANS A MATERIAL, POSITIVE IMPACT ON SOCIETY AND THE ENVIRONMENT, AS MEASURED BY A THIRD-PARTY STANDARD, THROUGH ACTIVITIES THAT PROMOTE A COMBINATION OF SPECIFIC PUBLIC BENEFITS.

~~(C) “PUBLIC BENEFIT” MEANS:~~

(D) “SPECIFIC PUBLIC BENEFIT” INCLUDES:

(1) PROVIDING INDIVIDUALS OR COMMUNITIES WITH BENEFICIAL PRODUCTS OR SERVICES;

(2) PROMOTING ECONOMIC OPPORTUNITY FOR INDIVIDUALS OR COMMUNITIES BEYOND THE CREATION OF JOBS IN THE NORMAL COURSE OF BUSINESS;

(3) PRESERVING THE ENVIRONMENT;

(4) IMPROVING HUMAN HEALTH;

(5) PROMOTING THE ARTS, SCIENCES, OR ADVANCEMENT OF KNOWLEDGE; ~~OR~~

(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.

(E) “THIRD-PARTY STANDARD” MEANS A STANDARD FOR DEFINING, REPORTING, AND ASSESSING BEST PRACTICES IN CORPORATE SOCIAL AND ENVIRONMENTAL PERFORMANCE THAT:

(1) IS DEVELOPED BY A PERSON OR ENTITY THAT IS INDEPENDENT OF THE BENEFIT CORPORATION; AND

(2) IS TRANSPARENT BECAUSE THE FOLLOWING INFORMATION ABOUT THE STANDARD IS PUBLICLY AVAILABLE OR ACCESSIBLE:

(i) THE FACTORS CONSIDERED WHEN MEASURING THE PERFORMANCE OF A BUSINESS;

(ii) THE RELATIVE WEIGHTINGS OF THOSE FACTORS; AND

(iii) THE IDENTITY OF THE PERSONS WHO DEVELOPED AND CONTROL CHANGES TO THE STANDARD AND THE PROCESS BY WHICH THOSE CHANGES WERE MADE.

5-6C-02.

(A) THE PROVISIONS OF THE MARYLAND GENERAL CORPORATION LAW APPLY TO ~~B~~ BENEFIT CORPORATIONS EXCEPT TO THE EXTENT THAT:

(1) THE CONTEXT OF A PROVISION CLEARLY REQUIRES OTHERWISE; OR

(2) A SPECIFIC PROVISION OF THIS SUBTITLE OR ANOTHER PROVISION OF LAW GOVERNING SPECIFIC CLASSES OF CORPORATIONS PROVIDES OTHERWISE.

(B) THIS SUBTITLE APPLIES ONLY TO ~~B~~ BENEFIT CORPORATIONS.

(C) (1) THE EXISTENCE OF A PROVISION OF THIS SUBTITLE DOES NOT OF ITSELF CREATE ANY IMPLICATION THAT A CONTRARY OR DIFFERENT RULE OF LAW IS OR WOULD BE APPLICABLE TO A CORPORATION THAT IS NOT A ~~B~~ BENEFIT CORPORATION.

(2) THIS SUBTITLE DOES NOT AFFECT ANY STATUTE OR RULE OF LAW AS IT APPLIES TO A CORPORATION THAT IS NOT A ~~B~~ BENEFIT CORPORATION.

(D) A PROVISION OF THE CHARTER OR BYLAWS OF A ~~B~~ BENEFIT CORPORATION MAY NOT BE INCONSISTENT WITH ANY PROVISION OF THIS SUBTITLE.

5-6C-03.

(A) A CORPORATION MAY ELECT TO BE A **B** BENEFIT CORPORATION UNDER THIS SUBTITLE BY AMENDING OR INCLUDING IN THE CHARTER OF THE CORPORATION A STATEMENT THAT THE CORPORATION IS A ~~B (“FOR-BENEFIT”)~~ CORPORATION BENEFIT CORPORATION.

(B) AN ~~ELECTION~~ AMENDMENT DESCRIBED IN SUBSECTION (A) OF THIS SECTION SHALL BE APPROVED ~~BY THE STOCKHOLDERS OF THE CORPORATION BY THE HIGHER OF:~~

~~(1) THE VOTE REQUIRED BY THE ARTICLES OF INCORPORATION OF THE CORPORATION; OR~~

~~(2) TWO THIRDS OF THE VOTES ENTITLED TO BE CAST BY THE OUTSTANDING SHARES OF THE CORPORATION, PROVIDED THAT IF ANY CLASS OF SHARES IS ENTITLED TO VOTE AS A GROUP, APPROVAL SHALL ALSO REQUIRE THE AFFIRMATIVE VOTE OF THE HOLDERS OF AT LEAST TWO THIRDS OF THE VOTES ENTITLED TO BE CAST BY THE OUTSTANDING SHARES OF EACH VOTING GROUP~~ IN ACCORDANCE WITH TITLE 2, SUBTITLE 6 OF THIS ARTICLE.

5-6C-04.

(A) A CORPORATION MAY TERMINATE STATUS AS A **B** BENEFIT CORPORATION AND CEASE TO BE SUBJECT TO THIS SUBTITLE BY AMENDING THE ~~ARTICLES OF INCORPORATION~~ CHARTER OF THE CORPORATION TO DELETE THE STATEMENT THAT THE CORPORATION IS A **B** BENEFIT CORPORATION.

(B) ~~THE TERMINATION OF~~ AN AMENDMENT TERMINATING A CORPORATION’S STATUS AS A **B** BENEFIT CORPORATION SHALL BE APPROVED BY THE STOCKHOLDERS OF THE CORPORATION ~~BY THE HIGHER OF:~~ IN ACCORDANCE WITH TITLE 2, SUBTITLE 6 OF THIS ARTICLE.

~~(1) THE VOTE REQUIRED BY THE ARTICLES OF INCORPORATION OF THE CORPORATION; OR~~

~~(2) TWO THIRDS OF THE VOTES ENTITLED TO BE CAST BY THE OUTSTANDING SHARES OF THE CORPORATION, PROVIDED THAT IF ANY CLASS OF SHARES IS ENTITLED TO VOTE AS A GROUP, APPROVAL SHALL ALSO REQUIRE THE AFFIRMATIVE VOTE OF THE HOLDERS OF AT LEAST TWO THIRDS OF THE VOTES ENTITLED TO BE CAST BY THE OUTSTANDING SHARES OF EACH VOTING GROUP.~~

5-6C-05.

CLEAR REFERENCE TO THE FACT THAT A CORPORATION IS A B BENEFIT CORPORATION SHALL APPEAR PROMINENTLY:

(1) AT THE HEAD OF THE CHARTER DOCUMENT IN WHICH THE ELECTION TO BE A B BENEFIT CORPORATION IS MADE;

(2) AT THE HEAD OF EACH SUBSEQUENT CHARTER DOCUMENT OF THE B BENEFIT CORPORATION; AND

(3) ON EACH CERTIFICATE REPRESENTING OUTSTANDING STOCK OF THE B BENEFIT CORPORATION.

5-6C-06.

(A) (1) EACH B BENEFIT CORPORATION SHALL HAVE THE PURPOSE OF CREATING A GENERAL PUBLIC BENEFIT.

(2) THE PURPOSE DESCRIBED IN PARAGRAPH (1) OF THIS SUBSECTION IS IN ADDITION TO, AND MAY BE A LIMITATION ON, THE PURPOSES OF THE CORPORATION UNDER § 2-101 OF THIS ARTICLE.

(B) (1) IN ADDITION TO ITS PURPOSES UNDER § 2-101 OF THIS ARTICLE AND SUBSECTION (A) OF THIS SECTION, THE CHARTER OF A BENEFIT CORPORATION MAY IDENTIFY AS ONE OF THE PURPOSES OF THE BENEFIT CORPORATION THE CREATION OF ONE OR MORE SPECIFIC PUBLIC BENEFITS.

(2) THE IDENTIFICATION IN ITS CHARTER OF A SPECIFIC PUBLIC BENEFIT PURPOSE UNDER PARAGRAPH (1) OF THIS SUBSECTION DOES NOT LIMIT THE OBLIGATION OF A BENEFIT CORPORATION TO CREATE A GENERAL PUBLIC BENEFIT.

~~(B)~~ (C) THE CREATION OF A GENERAL PUBLIC BENEFIT OR SPECIFIC PUBLIC BENEFIT AS PROVIDED IN ~~SUBSECTION (A)~~ SUBSECTIONS (A) AND (B) OF THIS SECTION IS IN THE BEST INTERESTS OF THE B BENEFIT CORPORATION.

5-6C-07.

(A) A DIRECTOR OF A B BENEFIT CORPORATION, IN PERFORMING THE DUTIES OF A DIRECTOR, INCLUDING THE DIRECTOR'S DUTIES AS A MEMBER OF A COMMITTEE AND IN ADDITION TO THE DUTIES DESCRIBED IN § 2-405.1 OF THIS ARTICLE:

(1) IN DETERMINING WHAT THE DIRECTOR REASONABLY BELIEVES TO BE IN THE BEST INTERESTS OF THE **B** BENEFIT CORPORATION, SHALL CONSIDER THE EFFECTS OF ANY ACTION OR DECISION NOT TO ACT ON:

(I) THE STOCKHOLDERS OF THE **B** BENEFIT CORPORATION;

(II) THE EMPLOYEES AND WORKFORCE OF THE **B** BENEFIT CORPORATION AND THE SUBSIDIARIES AND SUPPLIERS OF THE **B** BENEFIT CORPORATION;

(III) THE INTERESTS OF CUSTOMERS AS BENEFICIARIES OF THE GENERAL OR SPECIFIC PUBLIC BENEFIT PURPOSES OF THE **B** BENEFIT CORPORATION;

(IV) COMMUNITY AND SOCIETAL CONSIDERATIONS, INCLUDING THOSE OF ANY COMMUNITY IN WHICH OFFICES OR FACILITIES OF THE **B** BENEFIT CORPORATION OR THE SUBSIDIARIES OR SUPPLIERS OF THE **B** BENEFIT CORPORATION ARE LOCATED; AND

(V) THE LOCAL AND GLOBAL ENVIRONMENT; AND

(2) MAY CONSIDER ANY OTHER PERTINENT FACTORS OR THE INTERESTS OF ANY OTHER GROUP THAT THE DIRECTOR DETERMINES ARE APPROPRIATE TO CONSIDER ~~IN LIGHT OF THE PUBLIC BENEFIT DESCRIBED IN THE CHARTER OF THE **B** CORPORATION.~~

(B) A DIRECTOR OF A **B** BENEFIT CORPORATION, IN THE PERFORMANCE OF DUTIES IN THAT CAPACITY, DOES NOT HAVE ANY DUTY TO A PERSON THAT IS A BENEFICIARY OF THE PUBLIC BENEFIT PURPOSES OF THE **B** BENEFIT CORPORATION ~~DESCRIBED IN THE CHARTER OF THE **B** CORPORATION.~~

(C) A DIRECTOR OF A **B** BENEFIT CORPORATION, IN THE REASONABLE PERFORMANCE OF DUTIES IN ACCORDANCE WITH THE STANDARD PROVIDED IN THIS SUBTITLE, SHALL HAVE THE IMMUNITY FROM LIABILITY DESCRIBED IN § 5-417 OF THE COURTS ARTICLE.

5-6C-08.

(A) A **B** BENEFIT CORPORATION SHALL DELIVER TO EACH STOCKHOLDER AN ANNUAL ~~FOR-BENEFIT~~ BENEFIT REPORT INCLUDING:

(1) A DESCRIPTION OF:

(I) ~~THE WAYS IN WHICH THE B BENEFIT CORPORATION GENERALLY PURSUED THE A GENERAL PUBLIC BENEFIT DESCRIBED IN THE CHARTER DURING THE YEAR AND THE EXTENT TO WHICH THE GENERAL PUBLIC BENEFIT WAS CREATED; AND~~

(II) THE WAYS IN WHICH THE BENEFIT CORPORATION PURSUED ANY SPECIFIC PUBLIC BENEFIT THAT ITS CHARTER STATES IS THE PURPOSE OF THE BENEFIT CORPORATION TO CREATE AND THE EXTENT TO WHICH THAT SPECIFIC PUBLIC BENEFIT WAS CREATED; AND

~~(H)~~ (III) ANY CIRCUMSTANCES THAT HAVE HINDERED THE CREATION BY THE B BENEFIT CORPORATION OF THE PUBLIC BENEFIT; AND

(2) AN ASSESSMENT OF THE SOCIETAL AND ENVIRONMENTAL PERFORMANCE OF THE B BENEFIT CORPORATION PREPARED IN ACCORDANCE WITH ~~IDENTIFIED FACTORS THAT WERE CONSIDERED IN MEASURING THE PERFORMANCE OF THE B CORPORATION~~ A THIRD-PARTY STANDARD APPLIED CONSISTENTLY WITH THE PRIOR YEAR'S BENEFIT REPORT OR ACCOMPANIED BY AN EXPLANATION OF THE REASONS FOR ANY INCONSISTENT APPLICATION.

(B) ~~THE FOR-BENEFIT BENEFIT~~ REPORT SHALL BE DELIVERED TO EACH STOCKHOLDER WITHIN 120 DAYS FOLLOWING THE END OF EACH FISCAL YEAR OF THE B BENEFIT CORPORATION.

(C) (1) A BENEFIT CORPORATION SHALL POST ITS MOST RECENT BENEFIT REPORT ON THE PUBLIC PORTION OF ITS WEBSITE, IF ANY.

(2) IF A BENEFIT CORPORATION DOES NOT HAVE A PUBLIC WEBSITE, THE BENEFIT CORPORATION SHALL PROVIDE A COPY OF ITS MOST RECENT BENEFIT REPORT ON DEMAND AND WITHOUT CHARGE TO ANY PERSON WHO REQUESTS A COPY.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2010.

Approved by the Governor, April 13, 2010.