

1           **MODEL BENEFIT CORPORATION LEGISLATION**  
2                                   **With Explanatory Comments<sup>1</sup>**

3  
4                                   **[Chapter] \_\_**  
5                                   **Benefit Corporations**

6  
7        [Subchapter]

- 8        1. Preliminary Provisions  
9        2. Corporate Purposes  
10       3. Accountability  
11       4. Transparency

12  
13                                   **[Subchapter] 1**  
14                                   **Preliminary Provisions**

15  
16        Section

- 17        101. Application and effect of [chapter].  
18        102. Definitions.  
19        103. Incorporation of benefit corporation.  
20        104. Election of benefit corporation status.  
21        105. Termination of benefit corporation status.

22  
23        **§ 101. Application and effect of [chapter].**

24  
25            **(a) General rule.** – This [chapter] shall be applicable to all benefit corporations.

26  
27            **(b) Application of business corporation law generally.** – The existence of a  
28 provision of this [chapter] shall not of itself create an implication that a contrary or  
29 different rule of law is applicable to a business corporation that is not a benefit corporation.  
30 This [chapter] shall not affect a statute or rule of law that is applicable to a business  
31 corporation that is not a benefit corporation.

32  
33            **(c) Laws applicable.** – Except as otherwise provided in this [chapter], [the  
34 *enacting state's business corporation law*] shall be generally applicable to all benefit  
35 corporations. A benefit corporation may be subject simultaneously to this [chapter] and

---

<sup>1</sup> For a detailed discussion of the issues to be considered when preparing legislation for introduction in a state see Clark et al, *The Need and Rationale for the Benefit Corporation* (2011), available at [www.benefitcorp.org](http://www.benefitcorp.org). See generally, William H. Clark, Jr. and Elizabeth K. Babson, “*How Benefit Corporations are Redefining the Purpose of Business Corporations*,” 38 WM. MITCHELL L. REV. 817 (2012).

36 [cite any statutes that provide for the incorporation of a specific type of business  
37 corporation, such as a professional corporation or for-profit cooperative corporation].  
38 The provisions of this [chapter] shall control over the provisions of [cite the business  
39 corporation law] [and] [cite the professional corporation, cooperative corporation and  
40 other relevant laws].  
41

42 (d) **Organic records.** – A provision of the articles of incorporation or bylaws of a  
43 benefit corporation may not limit, be inconsistent with, or supersede a provision of this  
44 [chapter].  
45

46 **Comment:**  
47

48 This chapter authorizes the organization of a form of business corporation that offers  
49 entrepreneurs and investors the option to build, and invest in, a business that operates with  
50 a corporate purpose broader than maximizing shareholder value and that consciously  
51 undertakes a responsibility to maximize the benefits of its operations for all stakeholders,  
52 not just shareholders. Enforcement of that purpose and responsibility comes not from  
53 governmental oversight, but rather from new provisions on transparency and accountability  
54 included in this chapter.  
55

56 The second sentence of subsection (c) makes clear that if a state provides for the  
57 incorporation of specialized types of business corporations, such as statutory close  
58 corporations, insurance corporations, for-profit cooperative corporations, or professional  
59 corporations, those corporations may also be benefit corporations. In the case of a  
60 professional corporation, section 201(e) provides a special rule that eliminates any conflict  
61 between this chapter and the requirement found in many professional corporation laws that  
62 limits the purposes or business of a professional corporation to providing a particular type  
63 of professional service.  
64

65 As a result of subsection (d), a corporation that elects to be subject to this chapter  
66 will be subject to all of the provisions of the chapter and will not be able to vary their  
67 application to the corporation.  
68

69 The term “benefit corporation” used in this section is defined in section 102.  
70  
71

72 **§ 102. Definitions.**  
73

74 The following words and phrases when used in this [chapter] shall have the  
75 meanings given to them in this section unless the context clearly indicates otherwise:  
76

77 **“Benefit corporation.”** A business corporation:  
78

- 79 (1) that has elected to become subject to this [chapter]; and  
80

81 (2) the status of which as a benefit corporation has not been terminated.

82  
83 **“Benefit director.”** The director, if any, designated as the benefit director of a  
84 benefit corporation under section 302.

85  
86 **“Benefit enforcement proceeding.”** Any claim or action or proceeding for:

87  
88 (1) failure of a benefit corporation to pursue or create general public benefit  
89 or a specific public benefit purpose set forth in its articles; or

90  
91 (2) violation of any obligation, duty, or standard of conduct under this  
92 [chapter].

93  
94 **“Benefit officer.”** The individual, if any, designated as the benefit officer of a  
95 benefit corporation under section 304.

96  
97 **“General public benefit.”** A material positive impact on society and the  
98 environment, taken as a whole, assessed against a third-party standard, from the business  
99 and operations of a benefit corporation.

100  
101 **“Independent.”** Having no material relationship with a benefit corporation or a  
102 subsidiary of the benefit corporation. Serving as a benefit director or benefit officer does  
103 not make an individual not independent. A material relationship between an individual and  
104 a benefit corporation or any of its subsidiaries will be conclusively presumed to exist if any  
105 of the following apply:

106  
107 (1) The individual is, or has been within the last three years, an employee  
108 other than a benefit officer of the benefit corporation or a subsidiary.

109  
110 (2) An immediate family member of the individual is, or has been within the  
111 last three years, an executive officer other than a benefit officer of the benefit corporation  
112 or a subsidiary.

113  
114 (3) There is beneficial or record ownership of 5% or more of the outstanding  
115 shares of the benefit corporation, calculated as if all outstanding rights to acquire equity  
116 interests in the benefit corporation had been exercised, by:

117  
118 (i) the individual; or

119  
120 (ii) an entity:

121  
122 (A) of which the individual is a director, an officer, or a manager;

123 or

124  
125 (B) in which the individual owns beneficially or of record 5% or

126 more of the outstanding equity interests, calculated as if all outstanding rights to acquire  
127 equity interests in the entity had been exercised.

128  
129 **“Minimum status vote.”**

130  
131 (1) In the case of a business corporation, in addition to any other required  
132 approval or vote, the satisfaction of the following conditions:

133  
134 (i) The shareholders of every class or series shall be entitled to vote as a  
135 [*separate voting group*] [*class*] on the corporate action regardless of a limitation stated in  
136 the articles of incorporation or bylaws on the voting rights of any class or series.

137  
138 (ii) The corporate action must be approved by the affirmative vote of the  
139 shareholders of each class or series entitled to cast at least two-thirds of the votes that all  
140 shareholders of the class or series are entitled to cast on the action.

141  
142 *[(2) In the case of a domestic entity other than a business corporation, in*  
143 *addition to any other required approval, vote, or consent, the satisfaction of the following*  
144 *conditions:*

145  
146 (i) *The holders of every class or series of equity interest in the entity*  
147 *that are entitled to receive a distribution of any kind from the entity shall be entitled to vote*  
148 *on or consent to the action regardless of any otherwise applicable limitation on the voting*  
149 *or consent rights of any class or series.*

150  
151 (ii) *The action must be approved by the affirmative vote or consent of*  
152 *the holders described in subparagraph (i) entitled to cast at least two-thirds of the votes or*  
153 *consents that all of those holders are entitled to cast on the action.]*

154  
155 **“Specific public benefit.”** Includes:

156  
157 (1) providing low-income or underserved individuals or communities with  
158 beneficial products or services;

159  
160 (2) promoting economic opportunity for individuals or communities beyond  
161 the creation of jobs in the normal course of business;

162  
163 (3) protecting or restoring the environment;

164  
165 (4) improving human health;

166  
167 (5) promoting the arts, sciences, or advancement of knowledge;

168  
169 (6) increasing the flow of capital to entities with a purpose to benefit society  
170 or the environment; and

171  
172 (7) conferring any other particular benefit on society or the environment.  
173

174 **“Subsidiary.”** In relation to a person, an entity in which the person owns  
175 beneficially or of record 50% or more of the outstanding equity interests, calculated as if  
176 all outstanding rights to acquire equity interests in the entity had been exercised.  
177

178 **“Third-party standard.”** A recognized standard for defining, reporting, and  
179 assessing corporate social and environmental performance that is:  
180

181 (1) Comprehensive because it assesses the effects of the business and its  
182 operations upon the interests listed in section 301(a)(1)(ii), (iii), (iv) and (v).  
183

184 (2) Developed by an entity that is not controlled by the benefit corporation.  
185

186 (3) Credible because it is developed by an entity that both:  
187

188 (i) has access to necessary expertise to assess overall corporate social  
189 and environmental performance; and  
190

191 (ii) uses a balanced multistakeholder approach to develop the standard,  
192 including a reasonable public comment period.  
193

194 (4) Transparent because the following information is publicly available:  
195

196 (i) About the standard:  
197

198 (A) The criteria considered when measuring the overall social and  
199 environmental performance of a business.  
200

201 (B) The relative weightings, if any, of those criteria.  
202

203 (ii) About the development and revision of the standard:  
204

205 (A) The identity of the directors, officers, material owners, and the  
206 governing body of the entity that developed and controls revisions to the standard.  
207

208 (B) The process by which revisions to the standard and changes to  
209 the membership of the governing body are made.  
210

211 (C) An accounting of the revenue and sources of financial support  
212 for the entity, with sufficient detail to disclose any relationships that could reasonably be  
213 considered to present a potential conflict of interest.  
214

215 **Comment:**

216  
217       **“Benefit corporation.”** The provisions of this chapter apply to a business  
218 corporation while it has the status of a benefit corporation because its articles contain a  
219 statement that it is a benefit corporation. If that statement is deleted as provided in section  
220 105, the corporation will cease to be a benefit corporation immediately upon the  
221 effectiveness of the deletion.

222  
223       **“Benefit enforcement proceeding.”** This definition not only describes the action  
224 that may be brought under section 305, but it also has the effect of excluding other actions  
225 against a benefit corporation and its directors and officers because section 305(a) provides  
226 that “no person may bring an action or assert a claim against a benefit corporation or its  
227 directors or officers” with respect to violation of the provisions of this chapter except in a  
228 benefit enforcement proceeding.

229  
230       The obligations that may be enforced through a benefit enforcement proceeding  
231 include the obligations of a benefit corporation under section 402(b) to post its benefit  
232 reports on its Internet website and to supply copies of its benefit report if it does not have  
233 an Internet website. In the case of a failure to provide a copy of a benefit report, a benefit  
234 enforcement proceeding to enforce that obligation may only be brought by the persons  
235 listed in section 305 and not by the person requesting the copy of the report unless the  
236 person otherwise has standing under section 305.

237  
238       **“General public benefit.”** By requiring that the impact of a business on society and  
239 the environment be looked at “as a whole,” the concept of general public benefit requires  
240 consideration of all of the effects of the business on society and the environment. What is  
241 involved in creating general public benefit is informed by section 301(a) which lists the  
242 specific interests and factors that the directors of a benefit corporation are required to  
243 consider.

244  
245       **“Minimum status vote.”** An amendment of the articles or a fundamental change  
246 that has the effect of changing the status of a corporation so that it either becomes a benefit  
247 corporation or ceases to be a benefit corporation must be approved by the minimum status  
248 vote. *See* sections 104 and 105. The purpose of requiring a two-thirds vote under this  
249 chapter is to ensure that there is broad shareholder support for an action. This definition  
250 will not be needed in states that require a supermajority vote of two-thirds or more for  
251 amendments of the articles or fundamental changes.

252  
253       The second paragraph of the definition extends its policy to other forms of entities so  
254 that, for example, a merger of a limited liability company into a benefit corporation must  
255 be approved by the members of the limited liability company by at least a two-thirds vote.  
256 The second paragraph should be omitted by those states that require a supermajority vote  
257 of two-thirds or more by the owners of an unincorporated entity to approve a fundamental  
258 change. *See, e.g.*, Uniform Limited Liability Company Act (2006) (Last Amended 2013) §  
259 1023, which requires a unanimous vote by the members of a limited liability company to  
260 approve a merger.

261  
262 The two-thirds vote required by the definition is in addition to any other vote  
263 required in the case of any particular corporation or other form of entity. If the articles of a  
264 corporation were to require, for example, an 80% supermajority vote to approve a merger,  
265 a 70% vote to approve a merger of the corporation into a benefit corporation would be  
266 sufficient to satisfy the requirement that the merger be approved by the minimum status  
267 vote but would not be sufficient for valid approval of the merger.  
268

269 **“Specific public benefit.”** Every benefit corporation has the purpose under section  
270 201(a) of creating general public benefit. A benefit corporation may also elect to pursue  
271 one or more specific public benefit purposes. Since the creation of specific public benefit  
272 is optional, paragraph (7) of this definition permits a benefit corporation to identify a  
273 specific public benefit that is different from those listed in paragraphs (1) through (6).  
274

275 **“Third-party standard.”** The requirement in section 401 that a benefit corporation  
276 prepare an annual benefit report that assesses its performance in creating general public  
277 benefit against a third-party standard provides an important protection against the abuse of  
278 benefit corporation status. The performance of a regular business corporation is measured  
279 by the financial statements that the corporation prepares. But the performance of a benefit  
280 corporation in creating general or specific public benefit will not be readily apparent from  
281 those financial statements. The annual benefit report is intended to permit an evaluation of  
282 that performance so that the shareholders can judge how the directors have discharged their  
283 responsibility to manage the corporation and thus whether the directors should be retained  
284 in office or the shareholders should take other action to change the way the corporation is  
285 managed. The annual benefit report is also intended to reduce “greenwashing” (the  
286 phenomenon of businesses seeking to portray themselves as being more environmentally  
287 and socially responsible than they actually are) by giving consumers and the general public  
288 a means of judging whether a business is living up to its claimed status as a benefit  
289 corporation.  
290

291 The financial support that must be disclosed by an organization if it wishes to make  
292 available a third party standard should include investment income, grants, and other types  
293 of support in addition to revenue it receives from its operations.  
294  
295

### 296 **§ 103. Incorporation of benefit corporation.**

297

298 A benefit corporation shall be incorporated in accordance with [*cite incorporation*  
299 *provisions of the business corporation law*], but its articles of incorporation must also state  
300 that it is a benefit corporation.  
301

#### 302 **Comment:**

303

304 This section provides for how a corporation that is being newly formed may elect to  
305 be a benefit corporation. Existing corporations may become benefit corporations in the

306 manner provided in section 104.  
307

308 This chapter only applies to domestic business corporations. A foreign business  
309 corporation that has a status in its home jurisdiction similar to the status of a benefit  
310 corporation under this chapter is not subject to this chapter and has the status simply of a  
311 foreign business corporation for purposes of the state’s business corporation law.  
312

313 The term “benefit corporation” used in this section is defined in section 102.  
314  
315

## 316 **§ 104. Election of benefit corporation status.** 317

318 (a) **Amendment.** – An existing business corporation may become a benefit  
319 corporation under this [*chapter*] by amending its articles of incorporation so that they  
320 contain, in addition to the requirements of [*cite section of the business corporation law on*  
321 *the required contents of articles of incorporation*], a statement that the corporation is a  
322 benefit corporation. In order to be effective, the amendment must be adopted by at least  
323 the minimum status vote.  
324

### 325 (b) **Fundamental transactions.** – 326

327 (1) Except as provided in paragraph (2), if a domestic entity that is not a  
328 benefit corporation is a party to a merger[, *consolidation, or conversion*] [*or the*  
329 *exchanging entity in a share exchange*] and the surviving[, *new, or resulting*] entity in the  
330 merger, [*consolidation, conversion, or share exchange*] is to be a benefit corporation, the  
331 [*plan of*] merger[, *consolidation, conversion, or share exchange*] must be [*adopted*]  
332 [*approved*] by the domestic entity by at least the minimum status vote.  
333

334 (2) Paragraph (1) does not apply in the case of a corporation that is a party to  
335 a merger if the shareholders of the corporation are not entitled to vote on the merger  
336 pursuant to [*cite section of the business corporation law authorizing “short form”*  
337 *mergers*].  
338

### 339 **Comment:** 340

341 This section provides the procedures for an existing corporation to become a benefit  
342 corporation. A corporation that is being newly formed may become a benefit corporation  
343 in the manner provided in section 103. Subsection (a) applies to a business corporation  
344 that is directly electing to be a benefit corporation by amending its articles of  
345 incorporation. Subsection (b) applies when a corporation is becoming a benefit  
346 corporation indirectly in the context of a fundamental transaction. In both cases, the  
347 change to benefit corporation status must be approved by at least the minimum status vote.  
348

349 Subsection (b) also applies to a domestic entity that is not a corporation when the  
350 entity is a party to a transaction that will result in a benefit corporation. In those situations,



351 a supermajority vote of the owners of the entity is required by subsection (b).  
352

353 *See* section 201(d) with respect to changing the identification of a specific public  
354 benefit that it is the purpose of a benefit corporation to pursue.  
355

356 The following terms used in this section are defined in section 102:  
357

358 “benefit corporation”

359 “minimum status vote”  
360  
361

## 362 **§ 105. Termination of benefit corporation status.**

363  
364 **(a) Amendment.** – A benefit corporation may terminate its status as such and  
365 cease to be subject to this [*chapter*] by amending its articles of incorporation to delete the  
366 provision required by section 103 or 104 to be stated in the articles of a benefit  
367 corporation. In order to be effective, the amendment must be adopted by at least the  
368 minimum status vote.  
369

### 370 **(b) Fundamental transactions.** –

371  
372 (1) Except as provided in paragraph (2), if a [*plan of*] merger[, *consolidation,*  
373 *conversion, or share exchange*] would have the effect of terminating the status of a  
374 business corporation as a benefit corporation, the [*plan*] [*transaction*] must be adopted by  
375 at least the minimum status vote in order to be effective.  
376

377 (2) Paragraph (1) does not apply in the case of a corporation that is a party to  
378 a merger if the shareholders of the corporation are not entitled to vote on the merger  
379 pursuant to [*cite section of the business corporation law authorizing “short form”*  
380 *mergers*].  
381

382 (3) Any sale, lease, exchange, or other disposition of all or substantially all of  
383 the assets of a benefit corporation, unless the transaction is in the usual and regular course  
384 of business, shall not be effective unless the transaction is approved by at least the  
385 minimum status vote.  
386

### 387 **Comment:**

388  
389 This section provides the procedures for a benefit corporation to terminate  
390 voluntarily its status as a benefit corporation. As with an election of benefit corporation  
391 status under section 104, the termination may be accomplished either directly by an  
392 amendment of the articles or indirectly through a fundamental transaction.  
393

394 Subsection (b)(3) provides a special rule for a sale of all or substantially all of the  
395 assets of a benefit corporation. Such a transaction will not result in a termination of the

396 status of the corporation as a benefit corporation, but will have effectively the same result  
397 since it will terminate the operations of the business. Thus it was considered appropriate to  
398 require approval of a sale of assets by the minimum status vote. Whether a sale of assets is  
399 in the usual and regular course will be determined under the same standards as apply to  
400 that question under the state’s business corporation law. *See, e.g., Model Business*  
401 *Corporation Act* §§ 12.01 and 12.02.

402 The following terms used in this section are defined in section 102:

403 “benefit corporation”

404 “minimum status vote”

## 405 406 407 408 409 **Subchapter 2** 410 **Corporate Purposes**

411 Section

412 201. Corporate purposes.

### 413 414 **§ 201. Corporate purposes.**

415  
416  
417 **(a) General public benefit purpose.** – A benefit corporation shall have a purpose  
418 of creating general public benefit. This purpose is in addition to its purpose under [*cite*  
419 *section of the business corporation law on the purpose of business corporations*].

420  
421 **(b) Optional specific public benefit purpose.** – The articles of incorporation of a  
422 benefit corporation may identify one or more specific public benefits that it is the purpose  
423 of the benefit corporation to create in addition to its purposes under [*cite section of the*  
424 *business corporation law on the purpose of business corporations*] and subsection (a). The  
425 identification of a specific public benefit under this subsection does not limit the purpose  
426 of a benefit corporation to create general public benefit under subsection (a).

427  
428 **(c) Effect of purposes.** – The creation of general public benefit and specific public  
429 benefit under subsections (a) and (b) is in the best interests of the benefit corporation.

430  
431 **(d) Amendment.** – A benefit corporation may amend its articles of incorporation  
432 to add, amend, or delete the identification of a specific public benefit that it is the purpose  
433 of the benefit corporation to create. In order to be effective, the amendment must be  
434 adopted by at least the minimum status vote.

435  
436 **(e) Professional corporations.** – A professional corporation that is a benefit  
437 corporation does not violate [*cite section of professional corporation law, if any, that*  
438 *restricts the business in which a professional corporation may engage*] by having the  
439 purpose to create general public benefit or a specific public benefit.  
440

441 **Comment:**

442

443 Every benefit corporation has the corporate purpose of creating general public  
444 benefit. A benefit corporation may also elect to pursue specific public benefits under  
445 subsection (b).

446

447 Subsection (c) confirms that pursuing general and specific public benefit is in the  
448 best interests of the benefit corporation. Because the basic duty of a director is to act in a  
449 manner that the director reasonably believes to be in the best interests of the corporation,  
450 decisions by the board of directors that promote the creation of general or specific public  
451 benefit will satisfy the requirement to act in the best interests of the corporation. If an  
452 ordinary business corporation includes in its articles of incorporation a statement of a  
453 specific purpose, it is by definition in the best interests of the corporation for the directors  
454 to pursue that purpose. Thus the rule in subsection (c) would be the case in any event with  
455 respect to specific public benefit purposes, but specific public benefits have been referred  
456 to expressly in subsection (c) to avoid the confusion that might result if subsection (c) only  
457 referred to the creation of general public benefit.

458

459 Some professional corporation statutes provide that a professional corporation may  
460 not engage in any business other than rendering the professional service for which it was  
461 specifically incorporated. Subsection (e) makes clear that such a limitation will not  
462 interfere with a professional corporation electing to be a benefit corporation. In such a  
463 case, the professional corporation (such as a law firm, accounting firm, or medical  
464 practice) will be limited to providing the professional services for which it was  
465 incorporated, but it will be able to provide those services in a manner that creates general  
466 public benefit or a specific public benefit (for example, a medical practice that focuses on  
467 providing care for low-income individuals).

468

469 The following terms used in this section are defined in section 102:

470

471 “benefit corporation”

472 “general public benefit”

473 “minimum status vote”

474 “specific public benefit”

475

476

477 **Subchapter 3**  
478 **Accountability**

479

480 Section

481 301. Standard of conduct for directors.

482 302. Benefit director.

483 303. Standard of conduct for officers.

484 304. Benefit officer.

485 305. Right of action.

486  
487  
488  
489  
490  
491  
492  
493  
494  
495  
496  
497  
498  
499  
500  
501  
502  
503  
504  
505  
506  
507  
508  
509  
510  
511  
512  
513  
514  
515  
516  
517  
518  
519  
520  
521  
522  
523  
524  
525  
526  
527  
528  
529  
530

**§ 301. Standard of conduct for directors.**

**(a) Consideration of interests.** – 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:

(i) the shareholders of the benefit corporation;

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

(iii) the interests of customers as beneficiaries of the general public benefit or a specific public benefit purpose of the benefit corporation;

(iv) 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;

(v) the local and global environment;

(vi) 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

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

(2) may consider:

*[(i) the interests referred to in [cite constituencies provision of the business corporation law if it refers to constituencies not listed above]; and*

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

(3) need not give priority to a particular interest or factor referred to in paragraph (1) or (2) over any other interest or factor unless the benefit corporation has stated in its articles of incorporation its intention to give priority to certain interests or factors related to the accomplishment of its general public benefit purpose or of a specific public benefit purpose identified in its articles.

531           **(b) Coordination with other provisions of law.** –The consideration of interests  
532 and factors in the manner provided by subsection (a)[:

533  
534           (1) does not constitute a violation of [*cite provision of the business*  
535 *corporation law on the duties of directors generally*] [; and

536  
537           (2) *is in addition to the ability of directors to consider interests and factors as*  
538 *provided in [cite constituencies provision of the business corporation law]*].

539  
540           **(c) Exoneration from personal liability.** – Except as provided in the [*articles of*  
541 *incorporation*] [*bylaws*], a director is not personally liable for monetary damages for:

542  
543           (1) any action or inaction in the course of performing the duties of a director  
544 under subsection (a) if the director was not interested with respect to the action or inaction;  
545 or

546  
547           (2) failure of the benefit corporation to pursue or create general public benefit  
548 or specific public benefit.

549  
550           **(d) Limitation on standing.** – A director does not have a duty to a person that is a  
551 beneficiary of the general public benefit purpose or a specific public benefit purpose of a  
552 benefit corporation arising from the status of the person as a beneficiary.

553  
554           **(e) Business judgments.** – A director who makes a business judgment in good  
555 faith fulfills the duty under this section if the director:

556  
557           (1) is not interested in the subject of the business judgment;

558  
559           (2) is informed with respect to the subject of the business judgment to the  
560 extent the director reasonably believes to be appropriate under the circumstances; and

561  
562           (3) rationally believes that the business judgment is in the best interests of the  
563 benefit corporation.

564  
565 **Comment:**

566  
567           This section is at the heart of what it means to be a benefit corporation. By requiring  
568 the consideration of interests of constituencies other than the shareholders, the section  
569 rejects the holdings in *Dodge v. Ford*, 170 N.W. 668 (Mich. 1919), and *eBay Domestic*  
570 *Holdings, Inc. v. Newmark*, 16 A.3d 1 (Del. Ch. 2010), that directors must maximize the  
571 financial value of a corporation.

572  
573           In a state that has adopted a “constituency statute,” directors are authorized to  
574 consider the interests of corporate constituencies other than the shareholders, but the  
575 directors are not *required* to do so. Subsection (a) makes it mandatory for the directors of

576 a benefit corporation to consider the interests and factors that they would otherwise simply  
577 be permitted to consider in their discretion under the typical constituency statute.

578  
579 Subsection (d) negates any enforceable duty of directors to non-shareholder  
580 constituents. *But see* section 305(b) which permits a benefit corporation to provide in its  
581 articles that an identified category of persons may bring a benefit enforcement proceeding.  
582 If a benefit corporation were to do so, the identified non-shareholder constituents would be  
583 able to allege a breach of duty by the directors under this chapter for failing to pursue or  
584 create general or specific public benefit, but subsection (d) would prevent those  
585 constituents from alleging a breach of duty to them.

586  
587 Subsection (e) confirms that the business judgment rule applies to actions by  
588 directors under this section. The formulation of the rule is patterned after American Law  
589 Institute, Principles of Corporate Governance: Analysis and Recommendations § 4.01(c).  
590 If the law of the enacting state is not clear that the business judgment rule applies generally  
591 to actions by directors of corporations that are not business corporations, consideration  
592 should be given to confirming that the rule applies more broadly than just under this  
593 chapter. The best interests of the corporation referred to in subsection (e)(3) include the  
594 creation of general public benefit and specific public benefit as provided in section 201(c)  
595 and the determination of what is in the best interests of the benefit corporation requires  
596 consideration of the interests and factors listed in subsection (a).

597  
598 The following terms used in this section are defined in section 102:

599 “benefit corporation”

600 “general public benefit”

601 “specific public benefit”

602 “subsidiary”

## 603 604 605 606 **§ 302. Benefit director.**

607  
608 **(a) General rule.** – The board of directors of a benefit corporation may include a  
609 director who:

610 (1) is designated the benefit director; and

611  
612 (2) has, in addition to the powers, duties, rights, and immunities of the other  
613 directors of the benefit corporation, the powers, duties, rights, and immunities provided in  
614 this [*chapter*].

615  
616  
617 **(b) Election, removal, and qualifications.** – A benefit director shall be elected,  
618 and may be removed, in the manner provided by [*cite provisions of the business*  
619 *corporation law on the election and removal of directors generally*]. [*Except as provided*  
620 *in subsection (f),*] a benefit director shall be an individual who is independent. A benefit

621 director may serve as the benefit officer at the same time as serving as the benefit director.  
622 The articles of incorporation or bylaws of a benefit corporation may prescribe additional  
623 qualifications of a benefit director not inconsistent with this subsection.  
624

625 **(c) Annual compliance statement.** – The benefit director shall prepare, and the  
626 benefit corporation shall include in the annual benefit report to shareholders required by  
627 section 401, a report from the benefit director on all of the following:  
628

629 (1) Whether the benefit corporation acted in accordance with its general  
630 public benefit purpose and any specific public benefit purpose in all material respects  
631 during the period covered by the report.  
632

633 (2) Whether the directors and officers complied with sections 301(a) and  
634 303(a), respectively.  
635

636 (3) If the benefit director believes that the benefit corporation or its directors  
637 or officers failed to act or comply in the manner described in paragraphs (1) and (2), a  
638 description of the ways in which the benefit corporation or its directors or officers failed to  
639 act or comply.  
640

641 **(d) Status of actions.** – The act or inaction of an individual in the capacity of a  
642 benefit director shall constitute for all purposes an act or inaction of that individual in the  
643 capacity of a director of the benefit corporation.  
644

645 **(e) Exoneration from personal liability.** – Regardless of whether the articles of  
646 incorporation or bylaws of a benefit corporation include a provision eliminating or limiting  
647 the personal liability of directors authorized by [*cite section of the business corporation*  
648 *law permitting exoneration of directors*], a benefit director shall not be personally liable  
649 for an act or omission in the capacity of a benefit director unless the act or omission  
650 constitutes self-dealing, willful misconduct, or a knowing violation of law.  
651

652 **[(f) Professional Corporations.** – *The benefit director of a professional corporation*  
653 *does not need to be independent.*]  
654

655 **Comment:**  
656

657 The designation of a benefit director is optional. But if a benefit director is  
658 designated, one of the duties of that director will be to prepare the annual compliance  
659 statement required by subsection (c).  
660

661 The statement of the benefit director required by subsection (c) is an important part  
662 of the transparency required under this chapter. The perspective of the benefit director on  
663 whether the corporation has been successful in pursuing its general and any named specific  
664 public benefit purpose will be an important source of information for the shareholders as to  
665 whether the directors have adequately discharged their stewardship of the benefit

666 corporation and its resources.

667

668 Subsection (d) makes clear that the actions of a benefit director are actions of a  
669 director of the benefit corporation and are subject to the same standards as actions of  
670 directors generally.

671

672 The wording of subsection (e) should be conformed to the provision of the state’s  
673 business corporation law that permits the shareholders to adopt a provision of the articles  
674 of incorporation or bylaws exonerating directors from liability for breach of duty. But  
675 unlike existing exoneration provisions, subsection (e) does not require the benefit  
676 corporation to adopt an implementing provision in the articles or bylaws. Instead the  
677 liability shield provided by subsection (e) automatically applies to all benefit directors.

678

679 The following terms used in this section are defined in section 102:

680

681 “benefit corporation”

682 “benefit director”

683 “benefit officer”

684 “general public benefit”

685 “independent”

686 “publicly traded corporation”

687 “specific public benefit”

688

689

### 690 § 303. Standard of conduct for officers.

691

692 (a) **General rule.** – Each officer of a benefit corporation shall consider the interests  
693 and factors described in section 301(a)(1) in the manner provided in section 301(a)(3) if:

694

695 (1) the officer has discretion to act with respect to a matter; and

696

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

700

701 (b) **Coordination with other provisions of law.** – The consideration of interests  
702 and factors in the manner provided in subsection (a) shall not constitute a violation of [*cite*  
703 *provision, if any, of the business corporation law on the duties of officers*] [*the duties of an*  
704 *officer*].

705

706 (c) **Exoneration from personal liability.** – Except as provided in the [*articles of*  
707 *incorporation*] [*bylaws*], an officer is not personally liable for monetary damages for:

708

709 (1) an action or inaction as an officer in the course of performing the duties of  
710 an officer under subsection (a) if the officer was not interested with respect to the action or



711 inaction; or

712

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

715

716 **(d) Limitation on standing.** – An officer does not have a duty to a person that is a  
717 beneficiary of the general public benefit purpose or a specific public benefit purpose of a  
718 benefit corporation arising from the status of the person as a beneficiary.

719

720 **(e) Business judgments.** – An officer who makes a business judgment in good  
721 faith fulfills the duty under this section if the officer:

722

723 (1) is not interested in the subject of the business judgment;

724

725 (2) is informed with respect to the subject of the business judgment to the  
726 extent the officer reasonably believes to be appropriate under the circumstances; and

727

728 (3) rationally believes that the business judgment is in the best interests of the  
729 benefit corporation.

730

731 **Comment:**

732

733 As an agent of the corporation, an officer is generally required to follow the  
734 instructions of his or her principal. But in those instances where an officer has discretion  
735 to act with a respect to a matter, subsection (a) requires the officer to consider the interests  
736 of the benefit corporation’s constituencies in the same manner as required of the directors  
737 by section 301.

738

739 This section applies to all of the officers of a benefit corporation and is not limited  
740 just to the benefit officer, if any, of the benefit corporation.

741

742 Subsection (c) provides an exoneration from personal liability for officers similar to  
743 the exoneration provided for directors. If the law of the enacting state is not clear that  
744 officers can be exonerated in the same manner as directors, consideration should be given  
745 to confirming that officers of business corporations that are not benefit corporations may  
746 be exonerated. *See also* the Comment to section 301(d) with respect to subsection (d).

747

748 Subsection (e) confirms that the business judgment rule applies to actions by officers  
749 under this section. The formulation of the rule is patterned after American Law Institute,  
750 Principles of Corporate Governance: Analysis and Recommendations § 4.01(c). If the law  
751 of the enacting state is not clear that the business judgment rule applies generally to actions  
752 by officers of corporations, consideration should be given to confirming that the rule  
753 applies more broadly than just under this chapter. The best interests of the corporation  
754 referred to in subsection (e)(3) include the creation of general public benefit and specific  
755 public benefit under section 201(c) and the determination of what is in the best interests of

756 the benefit corporation requires consideration of the interests and factors listed in section  
757 301(a) (as provided by subsection (a)).

758

759 The following terms used in this section are defined in section 102:

760

761 “benefit corporation”

762 “benefit officer”

763 “general public benefit”

764 “specific public benefit”

765

766

767 **§ 304. Benefit officer.**

768

769 **(a) Designation.** – A benefit corporation may have an officer designated the  
770 benefit officer.

771

772 **(b) Functions.** – A benefit officer shall have:

773

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

776

777 (i) by the bylaws; or

778

779 (ii) absent controlling provisions in the bylaws, by resolution or order of  
780 the board of directors.

781

782 (2) the duty to prepare the benefit report required by section 401.

783

784 **Comment:**

785

786 The designation of a benefit officer is optional. But if a benefit officer is designated,  
787 one of the duties of that officer will be to prepare the annual benefit report required by  
788 section 401.

789

790 The following terms used in this section are defined in section 102:

791

792 “benefit corporation”

793 “benefit officer”

794 “general public benefit”

795 “specific public benefit”

796

797

798 **§ 305. Right of action.**

799

800 **(a) General rule.** – Except in a benefit enforcement proceeding, no person may

801 bring an action or assert a claim against a benefit corporation or its directors or officers  
802 with respect to:

803  
804 (1) failure to pursue or create general public benefit or a specific public  
805 benefit set forth in its articles of incorporation; or

806  
807 (2) violation of an obligation, duty, or standard of conduct under this  
808 [*chapter*].

809  
810 **(b) Limitation on liability of corporation.** – A benefit corporation shall not be  
811 liable for monetary damages under this [*chapter*] for any failure of the benefit corporation  
812 to pursue or create general public benefit or a specific public benefit.

813  
814 **(c) Standing.** – A benefit enforcement proceeding may be commenced or  
815 maintained only:

816  
817 (1) directly by the benefit corporation; or

818  
819 (2) derivatively [*in accordance with [cite sections of business corporation*  
820 *law on derivative suits]*] by:

821  
822 (i) a person or group of persons that owned beneficially or of record at  
823 least 2% of the total number of shares of a class or series outstanding at the time of the act  
824 or omission complained of;

825  
826 (ii) a director;

827  
828 (iii) a person or group of persons that owned beneficially or of record  
829 5% or more of the outstanding equity interests in an entity of which the benefit corporation  
830 is a subsidiary at the time of the act or omission complained of; or

831  
832 (iv) other persons as specified in the articles of incorporation or bylaws  
833 of the benefit corporation.

834  
835 **(d) Beneficial ownership.** – For purposes of this section, a person is the beneficial  
836 owner of shares or equity interests if the shares or equity interests are held in a voting trust  
837 or by a nominee on behalf of the beneficial owner.

838  
839 **Comment:**

840  
841 Standing in an action against the directors or officers of a business corporation that is  
842 not a benefit corporation for breach of duty is limited in most states just to the corporation  
843 or shareholders bringing a derivative suit. This section broadens the categories of persons  
844 that can bring a derivative suit to include directors, 5% owners of a parent entity, and other  
845 persons to which a benefit corporation grants standing in its articles of incorporation or

846 bylaws. To reduce the possibility of nuisance suits, a shareholder or group of shareholders  
847 bringing a derivative suit must own at least 2% of the outstanding shares of the benefit  
848 corporation.  
849

850 This section only applies to actions or claims arising under this chapter. Lawsuits for  
851 breaches of duty arising outside of this chapter, or for breach of contract by directors,  
852 officers, or the benefit corporation are not subject to this section.  
853

854 The following terms used in this section are defined in section 102:

855 “benefit corporation”

856 “benefit enforcement proceeding”

857 “general public benefit”

858 “specific public benefit”

859 “subsidiary”  
860  
861  
862

## 863 **Subchapter 4** 864 **Transparency**

865 Section

866 401. Preparation of annual benefit report.

867 402. Availability of annual benefit report.  
868  
869

### 870 **§ 401. Preparation of annual benefit report.**

871

872 **(a) Contents.** – A benefit corporation shall prepare an annual benefit report  
873 including all of the following:  
874

875 (1) A narrative description of:

876

877 (i) The ways in which the benefit corporation pursued general public  
878 benefit during the year and the extent to which general public benefit was created.  
879

880 (ii) Both:

881

882 (A) the ways in which the benefit corporation pursued a specific  
883 public benefit that the articles of incorporation state it is the purpose of the benefit  
884 corporation to create; and  
885

886 (B) the extent to which that specific public benefit was created.  
887

888 (iii) Any circumstances that have hindered the creation by the benefit  
889 corporation of general public benefit or specific public benefit.  
890

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

893  
894 (2) An assessment of the overall social and environmental performance of the  
895 benefit corporation against a third-party standard:

896  
897 (i) applied consistently with any application of that standard in prior  
898 benefit reports; or

899  
900 (ii) accompanied by an explanation of the reasons for:

901  
902 (A) any inconsistent application; or

903  
904 (B) the change to that standard from the one used in the  
905 immediately prior report.

906  
907 (3) The name of the benefit director and the benefit officer, if any, and the  
908 address to which correspondence to each of them may be directed.

909  
910 (4) The compensation paid by the benefit corporation during the year to each  
911 director in the capacity of a director.

912  
913 (5) The statement of the benefit director described in section 302(c).

914  
915 (6) A statement of any connection between the organization that established  
916 the third-party standard, or its directors, officers or any holder of 5% or more of the  
917 governance interests in the organization, and the benefit corporation or its directors,  
918 officers or any holder of 5% or more of the outstanding shares of the benefit corporation,  
919 including any financial or governance relationship which might materially affect the  
920 credibility of the use of the third-party standard.

921  
922 **(b) Change of benefit director.** – If, during the year covered by a benefit report, a  
923 benefit director resigned from or refused to stand for reelection to the position of benefit  
924 director, or was removed from the position of benefit director, and the benefit director  
925 furnished the benefit corporation with any written correspondence concerning the  
926 circumstances surrounding the resignation, refusal, or removal, the benefit report shall  
927 include that correspondence as an exhibit.

928  
929 **(c) Audit not required.** – Neither the benefit report nor the assessment of the  
930 performance of the benefit corporation in the benefit report required by subsection (a)(2)  
931 needs to be audited or certified by a third party.

932  
933 **Comment:**

934  
935 A benefit corporation may change from year to year the standard it uses under

936 subsection (a)(2) for assessing its performance. But if a benefit corporation uses the same  
937 standard for assessing its performance in more than one year, the standard must either be  
938 applied consistently or the benefit corporation must provide an explanation of the reasons  
939 for any inconsistent use of the standard.

940  
941 Subsection (b) is patterned after Item 5.02(a)(2) of Form 8-K under the Securities  
942 Exchange Act of 1934.

943  
944 The following terms used in this section are defined in section 102:

945  
946 “benefit corporation”

947 “benefit director”

948 “general public benefit”

949 “specific public benefit”

950 “third-party standard”

951  
952  
953 **§ 402. Availability of annual benefit report.**

954  
955 **(a) Timing of report.** – A benefit corporation shall send its annual benefit report to  
956 each shareholder on the earlier of:

957  
958 (1) 120 days following the end of the fiscal year of the benefit corporation; or

959  
960 (2) the same time that the benefit corporation delivers any other annual report  
961 to its shareholders.

962  
963 **(b) Internet website posting.** – A benefit corporation shall post all of its benefit  
964 reports on the public portion of its Internet website, if any; but the compensation paid to  
965 directors and financial or proprietary information included in the benefit reports may be  
966 omitted from the benefit reports as posted.

967  
968 **(c) Availability of copies.** – If a benefit corporation does not have an Internet  
969 website, the benefit corporation shall provide a copy of its most recent benefit report,  
970 without charge, to any person that requests a copy, but the compensation paid to directors  
971 and financial or proprietary information included in the benefit report may be omitted from  
972 the copy of the benefit report provided.

973  
974 **(d) Filing of report.** – Concurrently with the delivery of the benefit report to  
975 shareholders under subsection (a), the benefit corporation shall deliver a copy of the  
976 benefit report to the [*Secretary of State*] for filing, but the compensation paid to directors  
977 and financial or proprietary information included in the benefit report may be omitted from  
978 the benefit report as delivered to the [*Secretary of State*]. The [*Secretary of State*] shall  
979 charge a fee of \$\_\_ for filing a benefit report.

981 **Comment:**

982

983 Subsection (b) requires a benefit corporation to post all of its annual benefit reports  
984 on its website, but subsection (c) only requires that the most recent benefit report be  
985 supplied if the benefit corporation does not have a website.

986

987 The term “benefit corporation” used in this section is defined in section 102.

988

989 “benefit corporation”

990 “benefit director”